TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 17

THOMAS P. McMAHON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 13, 1951.

CERTIORARI GRANTED MAY 14, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,259

THOMAS P. McMAHON, *Appellant*,

vs.

UNITED STATES OF AMERICA,
UNITED STATES MARITIME COMMISSION,
Appellees.

Appeal from the Order of Dismissal of the United States District Court for the Eastern District of Pennsylvania

(No. 19 of 1948, in Admiralty)

[fol. 1] IN UNITED STATES DISTRICT COURT

DOCKET ENTRIES

1948	
Jan. 22.	Libel filed.
Jan. 22.	Citation exit—returnable February 13, 1948.
Feb. 3.	Citation returned "with affidavit of service attached" and filed.
Mar. 22.	Respondent's motion to dismiss for lack of jurisdiction filed.
Mar. 22.	Order to place case on Argument List filed.
1950	
May 11.	Order to place case on Argument List filed.
May 29.	Hearing on motion to dismiss libel.
June 20.	Affidavit of Paul M. Goldstein filed.
July 13.	Opinion and Order Clary, J. granting respondent's motion to dismiss first cause of action as

to sub-paragraph a, b, c, d, e, f & N of paragraph 8 of libel: and granting motion to dismiss the second cause of action as to any claim predating Jan. 22, 1946 filed.

[fol. 2] July 17. Libellant's Notice of Appeal filed (cc to G. A. Gleeson; Krusen, Evans & Shaw).

July 17. Copy of Clerk's notice to U. S. Court of Appeals filed.

[fol. 3] In United States District Court

Libel in Personam

(Filed January 22, 1948)

To the Honorable, the Judges of Said Court:

The libel and complaint of Thomas P. McMahon against the United States of America and United States Maritime Commission, in the cause of action for damages, civil and maritime, to wit:

1. The respondent, United States of America, was and is a sovereign which has by law consented to be sued herein; and the respondent, United States Maritime Commission, was and is a governmental agency of the United States established by executive order of the President of the United States and is the successor to War Shipping Administration.

2. The United States of America, through the War Shipping Administration, was at all times mentioned herein the owner of the S. S. "John Sherman" which vessel at the time of the occurrence hereinafter related was operated for the account of the United States of America and the [fol. 4] War Shipping Administration, predecessor to the United States Maritime Commission as a merchant vessel, under an agreement made between the said War Shipping Administration and Alcoa Steamship Company, Inc.

3. Upon information and belief libellant avers that at all times hereinafter mentioned the said Alcoa Steamship Company, Inc. operated and controlled the S. S. "John Sherman" for and on behalf of the United States of America under an agreement of general agency in coastwise, intercoastal and foreign commerce.

4. Libellant is a resident of the City of Philadelphia,

State of Pennsylvania, and is a seaman in the United States Merchant Marine.

5. On or about the 13th day of November, 1945, libellant entered the employ of respondents as a member of the crew of the S. S. "John Sherman" in the capacity of oiler and at the rate of $155.00 per month, plus bonus, found and overtime on foreign voyages and return to the United States, for a term not to exceed twelve months.

6. In or about November, 1945 during the course of said [fol. 5] voyage, libellant became afflicted with a skin condition which became aggravated because of improper treatment rendered him by respondents.

7. In or about December, 1945, during the course of said articles, libellant, while on shore leave in France, was assaulted and sustained injury to his nose and shoulders.

8. Disregarding their duties in the premises, respondents by their agents, servants, workmen and employees were careless and negligent in:

(a) failing to provide a reasonable and safe place for libellant to perform his duties;

(b) failing to provide careful, competent, proper and skillful co-employees and superior officers;

(c) failing to fumigate or otherwise rid the ship of the source of the skin disorder;

(d) failing to provide for libellant's health and safety;

[fol. 6] (e) rendering libellant improper treatment;

(f) failing to take proper precautions and exercise proper supervision over the work in which libellant was engaged;

(g) failing to provide proper and adequate medical care and attention and maintenance for the alleviation and cure of libellant's injuries;

(h) failing to provide libellant with a safe and seaworthy vessel and safe appurtenances, and to keep the same in a safe and seaworthy condition.

9. During the entire period libellant was employed, he well and truly performed all his duties and was obedient to the lawful commands of the Master and other officers of the said vessel.

[fol. 7] 10. By reason of the negligence of the respondents and of the unseaworthiness of the vessel, libellant

became afflicted with a skin condition, irritation and disorder which became aggravated with the treatment rendered him. As a result of the assault libellant suffered a fracture of the nose, deflection of the nasal septum, nasal infection and bursitis of left shoulder. He suffered a shock to his nervous system. He suffered aches, pains and mental anguish and disability. He has been unable to assume his usual occupation in the past. Conditions of arthritis and otoselerosis have been aggravated. He has been advised and therefore avers that he may suffer disability in the future. He has in the past and may in the future be compelled to expend sums of money for medicines, medical care and treatment.

11. Libellant has made demand for the payment of damages but the same has been refused.

[fol. 8] SECOND CAUSE OF ACTION

Libellant realleges all the facts set forth in the first cause of action and in addition thereto respectfully represents, shows and alleges:

12. By reason of his service upon the vessel, libellant claims wages and maintenance and cure for the period of his disability in an amount which to your Honorable Court shall seem just and proper upon the trial of this cause.

13. Demand for wages and maintenance and cure has been made by libellant but the same has been refused.

14. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant claims the sum of Fifteen Thousand ($15,000.00) Dollars from the respondents and prays that a citation in due form of law according to the laws and practice of this honorable court in the cause of admiralty and maritime jurisdiction may be issued, citing them to appear and answer all and singular the matters aforesaid [fol. 9] and that libellant may have judgment for the amount of his claim as aforesaid with interest and costs, with such other and further relief as the Court may deem just.

Stark and Goldstein, By (S.) Paul M. Goldstein,
Proctors for Libellant.

[fol. 10] *Duly sworn to by Paul M. Goldstein jurat omitted in printing.*

[fol. 11] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS FOR LACK OF JURISDICTION

(Filed March 22, 1948)

The Respondents, United States of America, and United States Maritime Commission, by their counsel, Gerald A. Gleeson, United States Attorney for the Eastern District of Pennsylvania, and Krusen, Evans and Shaw, both appearing specially and for the purpose of this motion only, move this Honorable Court to dismiss the Libel and Complaint of Thomas P. McMahon for the following reasons:

1. As will appear upon a reference to the Libel filed herein, two causes of action are alleged to have arisen, one in November and one in December of 1945. The Libel herein was filed January 22, 1948 and service was made upon the Attorney General, as provided by law, on January 26, 1948. The cause of action set forth in the Libel is subject to the provisions of the Suits in Admiralty Act of March 9, 1920; 46 U. S. C. A., Sections 741 to 745 inclusive and Act of March 24, 1943, 50 U. S. C. A. 1291. The limitation period provided by the Suits in Admiralty Act and incorporated [fol. 12] by reference into the Act of March 24, 1943, provides that suits thereunder "shall be brought within two years after the cause of action arises." As will appear by reference to the Libel, it was not filed within the said two year period after the alleged cause of action arose.

2. Under the provisions of the Act of March 24, 1943, 50 U. S. C. A. 1291, it is provided that as a condition precedent to bringing suit against the United States, a written claim must be filed and administratively disallowed; either by being refused or by the passage of sixty days from the date of filing without any action having been taken thereon. There is no showing upon the face of the Libel that this provision as to notice has been complied with and counsel for the Respondents is informed that, in fact, no such claim has ever been filed by the Libellant.

3. The Respondent, United States Maritime Commission,

is an agency created pursuant to the provisions of the Merchant Marine Act of 1936. It has never consented to be sued by statute or otherwise and it is immune from suit as an agency of the sovereign.

[fol. 13] Wherefore, the Respondent, United States Maritime Commission, prays that the Libel herein shall be dismissed as to it for lack of jurisdiction, and the Respondent, United States of America, moves this Honorable Court to dismiss the Libel for lack of jurisdiction as to it upon the basis of the averments in paragraphs (1) and (2) of this motion.

Gerald A. Gleeson, United States Attorney, Eastern District of Pennsylvania.
Krusen, Evans and Shaw, By.....,
Proctors for Respondents.

[fol. 14] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF PAUL M. GOLDSTEIN

(Filed June 20, 1950)

State of Pennsylvania)
County of Philadelphia) ss.

Paul M. Goldstein, being duly sworn according to law, deposes and says that he is a member of the firm of Stark and Goldstein, proctors for libellant in the above matter; that the attached photostat is a true and correct photostatic copy of letter from Alcoa Steamship Company, Inc., agent, to Messrs. Stark and Goldstein, dated April 17, 1946.

(S.) Paul M. Goldstein.

Sworn to and subscribed before me this 19th day of June, A. D. 1950. (S.) Berenice B. Bass (Seal), Notary Public. My Commission Expires end of next Session of Senate.

[fol. 15] ALCOA STEAMSHIP COMPANY, INC.
Seventeen Battery Place, New York 4, N. Y.
Cables Alcoaship—Tel. Whitehall 4-1500

April 17, 1946.

Messrs. Stark & Goldstein, 1103 North American Building, Broad and Sansom Streets, Philadelphia 7, Pa.

Gentlemen:

Subj.: SS John Sherman, Thomas P. McMahon.
(File No. 6273)

With reference to your letter of April 15, 1946, we wish to advise that we again very carefully reviewed our file with respect to the desertion charge and as a consequence we have decided to arrange for the cancellation of same. We wish to emphasize that our decision in this regard is prompted because of the imminent departure of Captain Dunlop and because of a desire to give your client the full benefit of all doubt and not because of any recognition of any responsibility to cancel the charge of desertion. We certainly are not yet convinced that Mr. McMahon was improperly classed a deserter.

A letter requesting the withdrawal of the desertion charge is this day being directed to the U. S. Shipping [fol.16] Commissioner, 42 Broadway, New York City, and hereafter it will be necessary that you communicate with him regarding the payment of earned wages.

As previously advised, we do not feel that Mr. McMahon is in a position to assert a valid claim for benefits under the maritime doctrine; this in view of the fact his pre-existent nasal condition was not aggravated as a consequence of his employment aboard the SS John Sherman nor did it any time during the voyage render him unfit for duty. However, for our further consideration, please submit the information and reports requested in the concluding paragraph of our letter of April 12, 1946.

Very truly yours,
United States of America
War Shipping Administration
By Alcoa Steamship Company, Inc., Agent.
(S.) H. A. Dawson, cmc Insurance Department.

HAD:cmc

[fol.17] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT

(Filed July 13, 1950)

July 12, 1950.

Clary, J.

In this Admiralty action, two causes of action are asserted, one for damages and the other for maintenance and cure. In the cause of action for damages, two accidents are involved; one in November 1945 and the other in December 1945. The libel was filed January 22, 1948, more than two years after the occurrence of the events alleged as the basis for the causes of action set forth in the libel. Respondent has moved to dismiss the libel as to both causes of action on the ground that the libel was not timely filed under the provisions of the Suits in Admiralty Act of March 9, 1920, 46 U. S. C. A., Sec. 741, et seq., and the Clarification Act of March 4, 1943, 50 U. S. C. A., Sec. 1291.

The Suits in Admiralty Act provides that suits thereunder "shall be brought within two years after the cause of action arises". The Clarification Act gives seamen employed on United States or foreign flag vessels as employees [fol.18] of the United States through the War Shipping Administration the same rights with respect to certain claims as are enjoyed by seamen employed on privately owned and operated American vessels. Under the Clarification Act such seamen employed by the United States are given the right to sue pursuant to the provisions of the Suits in Admiralty Act. The two-year period of limitations of the Suits in Admiralty Act therefore obtains in suits brought under the permission granted in the Clarification Act. The difficulty arises in this case in determining the effect of the provisions in the Clarification Act that "——Any claim (for damages and wages)——shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act ——, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. ——".

The question, therefore, is: When does the "cause of action" within the meaning of the Suits in Admiralty Act

arise as it applies to an action instituted under the authority of the Clarification Act? Libellant argues that the [fol. 19] "cause of action" arises only upon administrative disallowance of the claim and that therefore the two-year period of limitations should not commence in this case until the date of the administrative disallowance of the claim, April 17, 1947, as appears by affidavit of the proctors for the libellant. He argues that such disallowance is a condition precedent to the right to sue the United States and, therefore, the "cause of action" does not arise until that condition has been complied with. In support of his position libellant cites *Thurston* v. *United States*, 179 F. 2nd 514, C. A. 9 (1950). In that case, the accident occurred on July 10, 1946, and the claim was filed on April 16, 1948. No action was taken on the claim and under War Shipping Administration regulations, after sixty (60) days it was presumptively disallowed. The libel was filed August 4, 1948, or two years and twenty-five days after the accident. The Court of Appeals for the Ninth Circuit, Dennan, C. J., held that it was timely filed. I am impressed by the reasoning in that Opinion but the Court of Appeals for this Circuit has indicated a contrary result by an expression in the clearest language in *Hodinciuc* v. *United States*, 175 F. 2nd, 479 (1949). In that case, it was held that the seaman [fol. 20] had never perfected his statutory right to sue the United States because he had failed to file his claim before instituting suit. The point before me, therefore, was not considered, but in the Opinion, Goodrich, J., on behalf of the Court, stated "—— The seaman has two years from the time of his *injury* to start suit. Within that two-year period he must file a claim with the Administrator, and if it is disallowed, the seaman may sue.——". (Emphasis supplied) The language is clear and unequivocal. The seaman must institute suit within two years from the time of his *injury*. Though the statement is dictum, I feel bound by the expression. If the statement was made without consideration of the implications in the exact situation before me, any modification thereof is the province of the Court of Appeals.

The libel, therefore, must be dismissed as to the first cause of action except insofar as it alleges negligence in failing to provide proper and adequate medical care and attention and maintenance for the alleviation and cure of

libellant's injuries. The duty to provide maintenance and cure is a continuing one and I cannot say as a matter of [fol. 21] law that it could not have continued to a time within the two-year period of limitations. *Christo* v. *United States*, 83 Fed. Supp. 960; of *Ran* v. *Atlantic Refining Company*, 87 Fed. Supp. 853.

As to the second cause of action, for maintenance and cure, the liability for maintenance and cure is a continuing one and may be asserted for the two-year period immediately preceding the filing of the libel. *Kruhmin* v. *United States*, 81 Fed. Supp. 689. The motion to dismiss the cause of action for maintenance and cure is therefore granted only as to any claim preceding January 22, 1946. As to the claim for maintenance and cure from and after January 22, 1946, the motion will be dismissed.

[fol. 22] IN UNITED STATES DISTRICT COURT

ORDER DISMISSING DESIGNATED PORTIONS OF THE LIBEL

(Filed July 13, 1950)

And now, to wit, this 12th day of July, A. D. 1950, for the reasons set forth in the foregoing Opinion, it is

Ordered, adjudged and decreed that respondent's motion to dismiss the first cause of action be and it is hereby granted insofar as it relates to sub-paragraphs (a), (b), (c), (d), (e), (f) and (h) of paragraph 8 of the libel.

It is further ordered, adjudged and decreed that the respondent's motion to dismiss the second cause of action, for maintenance and cure, be and it is hereby granted as to any claim for the period predating January 22, 1946; as to the claim for the period from and after January 22, 1946, the motion is hereby dismissed.

By the Court: (S.) Thomas J. Clary. J.

[fol. 23] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL TO THE COURT OF APPEALS UNDER RULE 73(b), WITHOUT PREPAYMENT OF FEES OR COSTS OR GIVING SECURITY, UNDER 28 U. S. C., SECTION 1916, AS REVISED JUNE 25, 1948.

(Filed July 17, 1950)

Notice is hereby given that Thomas P. McMahon, the libellant above named, hereby appeals to the United States Court of Appeals for the Third Circuit from the Order dated July 12, 1950, and filed July 13, 1950, dismissing the first cause of action insofar as it relates to subparagraphs (a), (b), (c), (d), (e), (f) and (h) of paragraph 8 of the Libel and in dismissing the second cause of action, for maintenance and cure, as to any claim for the period predating January 22, 1946, without prepayment of fees or costs or furnishing security thereof.

Stark and Goldstein, By (S.) Paul M. Goldstein, Proctors for Appellant, 1201 Chestnut Street, Philadelphia 7, Pennsylvania.

[fol. 24] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title Omitted]

PETITION FOR LEAVE TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF FEES OR COSTS OR GIVING SECURITY THEREFOR, AND FOR LEAVE TO SUBMIT TYPEWRITTEN BRIEF AND APPENDIX.

(Filed July 21, 1950)

To The Honorable, The Judges of said Court:

The petition of Thomas P. McMahon by Stark and Goldstein, his proctors, respectfully represents:

1. He is the libellant in a certain admiralty action instituted in the United States District Court for the Eastern District of Pennsylvania for damages, for wages, and for maintenance and cure, against the above named respondents, therein designated as No. 19 of 1948, In Admiralty.

2. Libellant is a seaman in the United States Merchant Marine and was a member of the crew of respondents' vessel, the Steamship "John Sherman", in the course of which service he sustained disability.

3. The Libel in said cause was filed by the seaman-libellant without prepayment of fees or costs or giving security therefor, pursuant to 28 U. S. C. A. Section 1916.

(File Endorsement Omitted)

[fol. 25] 4. By Order dated July 12, 1950 and filed July 13, 1950, the District Court, on application of Respondent United States of America, dismissed designated portions of libellant's claims for damages and for maintenance and cure.

5. On July 17, 1950 seaman-libellant filed in said District Court his Notice of Appeal to this Court from its said Order entered July 13, 1950, which appeal libellant requests leave of your Honorable Court to prosecute without prepayment fees or costs or giving security therefor, pursuant to the provisions of Title 28, U. S. C. A., Section 1916.

6. Seaman-libellant further requests leave of your Honorable Court to submit briefs and appendixes in typewritten form.

And your petitioner will ever pray, etc.

Stark and Goldstein, By (S) Paul M. Goldstein,
Proctors for Appellant.

[fol. 26] *Duly sworn to by Paul M. Goldstein. Jurat omitted in printing.*

[fol. 27] UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Title Omitted]

ORDER GRANTING APPELLANT LEAVE TO DOCKET APPEAL WITHOUT PREPAYMENT OF COSTS OR GIVING SECURITY ETC.

(Filed July 21, 1950)

Upon consideration of the petition of appellant,

It is ordered that the appeal in the above-entitled case be docketed in this court without prepayment of costs or giving security therefor;

And it is further ordered that appellant be, and he is hereby granted leave to file typewritten briefs and appendices in conformity with Rule 24 (8) of this court.

Maris, Circuit Judge

July 21, 1950

[fol. 28-29] Stipulations re filing brief omitted in printing.

[fol. 30] UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10,259

THOMAS P. McMAHON, *Appellant*,

v.

UNITED STATES OF AMERICA,
UNITED STATES MARITIME COMMISSION

Appeal from the United States District Court for the Eastern District of Pennsylvania

Argued November 17, 1950

Before MARIS, McLAUGHLIN and STALEY, *Circuit Judges*.

OPINION OF THE COURT—Filed December 28, 1950

By MARIS, *Circuit Judge*.

This is an appeal from the judgment of the United States District Court for the Eastern District of Pennsylvania dismissing a seaman's suit in admiralty containing two counts. The first count set up a cause of action based on negligence and unseaworthiness while the second count sought maintenance and cure. The occurrences upon which both counts are predicated took place in November and December, 1945. The libel was filed January 22, 1948. The [fol. 31] first count was dismissed except insofar as it asserted negligent failure to provide medical care and maintenance and the second count was dismissed except as to maintenance and cure claimed for the period of two years immediately preceding the filing of the libel. The

suit was brought against the United States under the Suits in Admiralty Act pursuant to the Clarification Act. The action of the district court was based upon its conclusion that suit upon the subject matter of the dismissed counts was barred by the two years limitation contained in the Suits in Admiralty Act. 91 F. Supp. 593. The correctness of that conclusion is the sole question presented on this appeal.

Section 1(a) of the Clarification Act[1] gives to seamen employed by the United States on Government owned vessels the same rights against the United States with respect to "death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation" and "collection of wages and bonuses and making of allotments" which seamen employed on privately owned and operated American vessels have against the owners of those vessels. The act provides that "Any claim" of the kinds just referred to shall, "if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act." The Clarification Act further provides that "the term 'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration." When we turn to the Suits in Admiralty Act we find that Section 5 imposes the following limitation upon the bringing of suit:[2]

> "That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising [fol. 32] prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises."

The question for decision is whether the libelant's causes of action under the Clarification Act for personal injuries and maintenance and cure, which are here sought to be enforced by suit against the United States under the Suits in Admiralty Act, arose, within the meaning of Section 5

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[1] Act of March 24, 1943, 57 Stat. 45, c. 26, 50 U. S. C. A. Appendix § 1291(a).

[2] Act of March 9, 1920, c. 95, 41 Stat. 526, 46 U. S. C. A. § 745.

of that act, at the time when the injuries complained of occurred, or at the time when the seaman's claim with respect thereto was administratively disallowed pursuant to the Clarification Act. If the former is true more than two years elapsed between the time the causes of action arose and the time the suit was brought and, therefore, the suit was rightly held to be barred by the limitation contained in Section 5 of the act. If on the other hand the causes of action did not arise within the meaning of Section 5 of the Suits in Admiralty Act until after the administrative disallowance of the libelant's claims under the Clarification Act the suit was brought within the two years period and was consequently timely and should not have been dismissed.

We are satisfied that the district court was right in holding that the libelant's causes of action arose in November and December, 1945, when he sustained his injuries, and that they were, therefore, barred by the statute of limitations. In *Rodinciuc* v. *United States*, 1949, 175 F. 2d 479, 481, we said with respect to the question now before us: "The seaman has two years from the time of his injury to start suit. Within that two-year period he must file a claim with the Administrator, and if it is disallowed, the seaman may sue." We adhere to the view expressed in that opinion.

The libelant strongly urges that in the light of the requirement of the Clarification Act for the presentation and administrative disallowance of a seaman's claim before [fol. 33] suit may be brought upon it Section 5 of the Suits in Admiralty Act must be construed to mean that the seaman's cause of action does not arise until after such administrative disallowance has taken place and may, therefore, be prosecuted by suit if brought within two years after the latter event. He relies upon the decision of the Court of Appeals for the Ninth Circuit in *Thurston* v. *United States*, 1950, 179 F. 2d 514, which so holds. The decision in the *Thurston* case is placed largely upon the ground that legislation such as we are here considering, which is for the benefit of seamen, must be construed strongly in their favor. Proceeding upon this premise the court construed the phrase "cause of action" as used in the Suits in Admiralty Act as having a different meaning from the word "claim" as used in the Clarification Act, the "claim" being held to be that which accrues to the seaman when he is injured and

the "cause of action" being merely his right to bring a suit after administrative disallowance of his "claim".

We are unable to accept the view taken by our brethren of the Ninth Circuit because we think that it fails to give appropriate effect to considerations which we regard as controlling. It is, of course, true that legislation for the benefit of seamen is to be construed liberally in their favor. It is equally true, however, that both the Suits in Admiralty Act and the Clarification Act are statutes which waive the sovereign immunity of the United States from suit and as such, under an equally well accepted canon of construction, the extent of the right to sue which they confer must be construed strictly in favor of the sovereign.[3] Since we

Indeed, so strictly is this canon applied that limitations contained in such acts cannot be lengthened by waiver or estoppel but are to be regarded as qualifying and limiting the right and not merely the remedy. *Finn* v. *United States*, 1887, 123 U. S. 227; *Munro* v. *United States*, 1938, 303 U. S. 36; *Kruhmin* v. *United States*, 3 Cir. 1949, 177 F. 2d 906.

Moreover this canon has been applied to one of these very statutes, the Suits in Admiralty Act. *Blamberg Bros.* v. *United States*, 1923, 260 U. S. 452; *Eastern Transp. Co.* v. *United States*, 1927, 272 U. S. 658, 686.

[fol. 34] thus have two accepted canons, one which calls for a liberal construction of the statutes and the other which calls for a strict construction, it necessarily becomes our duty to give the legislation a reasonable construction which will accord with its language without throwing any weights on either side of the scale.

Considering the legislation in this light we observe that the Suits in Admiralty Act, Section 5 of which contains the limitation in question, was enacted in 1920, 23 years before the passage of the Clarification Act. Obviously Congress could not have had in mind at that time the procedure for the administrative consideration and disallowance of a claim which was not prescribed by it until nearly a quarter of a century later. Moreover we observe that Section 5 of the Suits in Admiralty Act expressly refers to "suits based on causes of action arising prior to the taking of

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[3] *United States* v. *Michel*, 1931, 282, U. S. 656; *United States* v. *Shaw*, 1940, 309 U. S. 495, 500-501; *United States* v. *Sherwood*, 1941, 312 U. S. 584, 586-587.

effect of this Act." Since suits in personam against the United States upon the causes of action here referred to were not authorized until the passage of the Suits in Admiralty Act the quoted language necessarily refers to "causes of action arising" before the time when suits could be brought on them. Thus the express language of Section 5 itself negates the libelant's proposition that a "cause of action" as the phrase is used in that section refers only to a claim upon which suit may presently be brought and that it, therefore, "arises" only when the right to bring suit thereon has accrued.

It thus appears that the libelant fails to make a distinction between a cause of action and the right of action thereon. There is, however, a recognized distinction between the two[4] which is controlling here. A cause of action is a legal wrong, the thing which becomes a ground for suit.[5] Here the libelant's causes of action were the legal [fol. 35] wrongs which he had allegedly suffered at the hands of the United States in connection with his injuries. These causes of action arose at the moment of injury and he was entitled to enforce them by claim under the administrative procedure provided for by the Clarification Act, and, if that claim was disallowed, by suit under the Suits in Admiralty Act. A right of action, on the other hand, is a right presently to enforce a cause of action by suit. Under the terms of the Clarification Act, however, the libelant's right of action did not arise unless and until he exhausted his administrative remedy. Until then he was precluded from instituting suit upon his causes of action. The making of an administrative claim was nonetheless a step in the enforcement of those causes of action which had been vested in him from the time of injury.

We accordingly conclude that the libelant's causes of action arose in November and December, 1945 when he was injured and under the express terms of Section 5 of the Suits in Admiralty Act were not enforceable by a suit brought more than two years thereafter. We are the more persuaded of the correctness of this conclusion when we

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[4] *Reading Co.* v. *Koons*, 1926, 271 U. S. 58; *Hudson Motor Car Co.* v. *Hertz*, 6 Cir. 1941, 121 F. 2d 326, 331, cert. den. 314 U. S. 696; 1 Am. Jur., Actions, § 3.

[5] *Baltimore S.S. Co.* v. *Phillips*, 1927, 274 U. S. 316, 321.

consider that the construction of the statutes for which the libelant contends would as a practical matter emasculate the limitation of the Suits in Admiralty Act so far as claims under the Clarification Act are concerned. For under the libelant's view a claimant merely by deferring the filing of his administrative claim could retain his right to bring suit against the United States for as many years as he thought advantageous to himself. This would necessarily follow from the fact that the Clarification Act contains no limitation upon the time within which claims may be presented for administrative consideration. We cannot believe that Congress intended any such result as this when, by enacting the Suits in Admiralty Act and the Clarification Act, it waived the immunity of the United States. Not having included a limitation in the latter act it must have [fol. 36] intended that the existing limitation of the Suits in Admiralty Act should apply.

The judgment of the district court will be affirmed.

[fol. 37] UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10,259

THOMAS P. McMAHON, *Appellant,*

vs.

UNITED STATES OF AMERICA,
UNITED STATES MARITIME COMMISSION

On Appeal from the United States District Court
For the Eastern District of Pennsylvania

Present: MARIS, McLAUGHLIN and STALEY, *Circuit Judges.*

JUDGMENT FILED DECEMBER 28, 1950

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said

District Court in this case be, and the same is hereby affirmed.

[File endorsement omitted]

[fol. 38] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 39] SUPREME COURT OF THE UNITED STATES

No. 606

October Term, 1950

Order allowing certiorari. Filed May 14, 1951.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 17

THOMAS P. McMAHON;

Petitioner,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S BRIEF

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 17

THOMAS P. McMAHON,

Petitioner,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S BRIEF

Preliminary Statement

The judgment of the Court of Appeals was entered December 28, 1950. On May 14, 1951 this Court granted the petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Question Presented

When does the "cause of action" within the meaning of the Suits in Admiralty Act of March 9, 1920, 46 U. S. C. A., Sec. 741 *et seq.* arise as applied to an action instituted under the authority of the War Shipping Administration (Clarification) Act of March 4, 1943, 50 U. S. C. A., Sec. 1291?

Summary of the Matter Involved

Petitioner is a merchant seaman of the United States Merchant Marine.

This is his libel in admiralty, asserting two causes of action: one for damages and the other for wages and maintenance and cure (Record, pp. 2-4). Two accidents are involved in the damage phase of the case; the first was sustained in November and the other in December, 1945. The libel was filed January 22, 1948 (Record, p. 2).

Prior to the institution of suit petitioner, in accordance with the provisions of the War Shipping Administration (Clarification) Act (March 4, 1943, 50 U. S. C. A., App. Sec. 1291), filed his claim with Alcoa Steamship Company, Inc., the general agent. On April 17, 1946 the general agent disallowed petitioner's Claim (Record, pp. 6, 7).

The libel was filed January 22, 1948 (Record, p. 2), more than two years after either accident but less than two years from April 17, 1946, the date of disallowance of his claim (Record, pp. 6, 7). Suit was instituted pursuant to the provisions of the Suits in Admiralty Act (March 9, 1920, 46 U. S. C. A., Sec. 741 *et seq.*) as required by the Clarification Act.

Respondents filed a motion to dismiss for lack of jurisdiction (Record, pp. 5, 6). While the motion alleged three grounds, respondents, in both Courts below, relied solely

upon the ground that the libel was not filed within the two-year limitation of the Suits in Admiralty Act, which provides that suits thereunder shall be brought within the two-year period after the cause of action arises. Respondents' contention was that the cause of action arose at the time of accident or injury; petitioner's contention was that the cause of action arose upon the administrative disallowance of his claim.

The motion to dismiss was directed against both causes of action. The District Court, by Order filed July 17, 1950, granted the motion as to the first cause of action insofar as it related to subparagraphs (a), (b), (c), (d), (e), (f) and (h) of paragraph 8 of the libel; and granted the motion to dismiss as to so much of the second cause of action for maintenance and cure as predated January 22, 1946 (Record, p. 10). Therefore, with respect to damages, all claims for negligence and unseaworthiness were dismissed. The District Court held that the cause of action arose at the time of accident or injury and not upon administrative disallowance of the claim.

On December 28, 1950, the United States Court of Appeals for the Third Circuit, in an opinion by Maris, J., affirmed the judgment of the District Court (Record, pp. 13-18). The opinion of the Court is reported in 186 F. 2d 227.

Summary of Argument

Petitioner contends that the Court of Appeals has misconstrued the term "cause of action" as applied to the facts of this case. A "cause of action" is predicated upon the entire state of facts that gives rise to an enforceable claim. The "cause of action" did not arise or accrue until the seaman's claim was disallowed since prior thereto he could not enforce it by court action.

Argument

I. Introductory

By the terms of the Clarification Act, officers and members of the crew employed on United States vessels as employees of the United States, through the War Shipping Administration, are given all the rights accorded to United States citizens employed as seamen on privately owned and operated American vessels, with respect to claims arising out of death, personal injuries, cure and maintenance, wages, etc. The same section provides that, as to these claims, they "shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act. . . ." And further, "When used in this subsection the term 'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. . . ."

The administrator's regulations on this point are as follows:

> "Section 304.23. *Court action, condition precedent.* No seaman or his surviving dependent or beneficiary or legal representative having a claim under the provisions of Section 304.21 and 304.22, shall commence a court action for the enforcement of such claim unless such claim has been filed by him or on his behalf or by or on behalf of his surviving dependent or beneficiary or legal representative as provided in Sections 304.24 and 304.25, and has been administratively disallowed by the person or agency with whom it was so filed." (War Shipping Administration, General Order 32, 8 Fed. Reg. 5414). (Emphasis supplied.).

It will be noted that the Clarification Act provides that *a claim, administratively disallowed, shall be enforced* pur-

suant to the provisions of the Suits in Admiralty Act. That Act provides that suits "shall be brought within two years *after the cause of action arises.*" (Emphasis supplied.). The Clarification Act does not limit the time within which a claim shall be filed.

To summarize, petitioner sustained his injuries in November and December, 1945. His claim was administratively disallowed on April 17, 1946 and the libel was filed January 22, 1948. The question, therefore, is "When did the 'cause of action' arise?" It is petitioner's contention that his "cause of action" arose on April 17, 1946 when his *claim* was administratively disallowed and that, therefore, his suit, having been commenced within two years from that date, is not time-barred.

II. The Seaman's Cause of Action Arose upon Disallowance of His Claim

The rationale of the Court's opinion appears to be based upon a distinction between the terms "cause of action" and "right of action" thereon. In making this distinction the Court overlooked the fact that the phrase "right of action" nowhere appears in the text of either statute. Since only the phrase "cause of action" is used in the Suits in Admiralty Act, it is its meaning alone which must be ascertained and applied to the facts of this case.

Corpus Juris Secundum (Vol. 1, P. 983, Sec. 8(d).), states that: "A cause of action, as defined in the sense of a party's right, is a right of recovery; a right to bring and maintain an action." In I *American Jurisprudence*, P. 417, Sec. 20, it is stated: "The essential elements of a good cause of action are the existence of a legal right in the plaintiff, with a corresponding legal duty in the defendant, and a violation or breach of that right or duty with consequential injury or damage to the plaintiff, for which he may maintain an ac-

tion for the recovery of money damages, or other appropriate relief."

The basic fundamental element of a "cause of action" is the right to pursue a judicial remedy. By the very words of General Order 32, 8 Fed. Reg. 5414, administrative disallowance is a condition precedent to such court action. "Although it may be necessary that a number of separate facts exist in order to create a cause of action, *yet it is the happening of the last of such facts which brings the cause of action into existence.* Such an act, or the failure to act where there is a duty to do so, is the critical event which transforms a potential liability into one presently enforceable. Case cited. A liability, whether created by contract or by statute, is not the same as a cause of action." *Helmers* v. *Anderson*, 156 F. 2d 47, affirmed 331 U. S. 461. (Emphasis supplied.)

The period of limitation begins to run only from the time the cause of action accrues. *Van Dyke* v. *Reich*, 27 F. Supp. 436, affirmed 107 F. 2d 682; *Creedon* v. *Babcock*, 163 F. 2d 480; *Federal Reserve Bank of Atlanta, &C.* v. *Atlanta Trust Co.*, 91 F. 2d 283; *Dusek* v. *Pa. R. R. Co.*, 68 F. 2d 131; *Paulson* v. *U. S.*, 78 F. 2d 97; *Pettibone* v. *Cook County*, 120 F. 2d 850; *City of Beach* v. *Goepfert*, 147 F. 2d 480.

Corpus Juris states the rule thusly:

> "'The accrual of the cause of action' means the right to institute and maintain a suit; and whenever one person may sue another a cause of action has accrued and the statute begins to run, but not until that time. So, whether at law or in equity, the cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief. The statute does not attach to a claim for which there is no right of action, and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. The true test therefore to determine when a cause of action has ac-

crued is to ascertain the time when plaintiff could first have maintained his action to a successful result." 37 *C. J. Limitation of Actions*, 810, Sec. 153. See also 54 *C. J. S. Limitation of Actions*, 11, Sec. 109 and 34 *Am. Jur.*, 91, *Limitation of Actions*, Sec. 113.

It cannot be disputed by respondents that as prerequisite to the institution of suit the seaman must file his claim and await its disallowance and that the filing and disallowance are conditions precedent to court action. The seaman must affirmatively prove the same in order to recover. His failure or refusal to file a claim is fatal: *Rodinciuc* v. *U. S.*, 175 F. 2d 479. There can be no doubt, therefore, that proof of filing and disallowance of his claim is one of the facts necessary to bring the "cause of action" into existence.

In *Chesapeake and Ohio Ry. Co.* v. *Dixon*, 179 U. S. 131, 139, this Court said "The cause of action manifestly comprised every fact which plaintiff was obliged to prove in order to obtain judgment, or conversely, every fact which defendant would have the right to traverse."

The language of the Court in *Dennison* v. *Payne*, 293 F. 333, is peculiarly apt: "The cause of the injury upon which the right of action is founded is not the cause of action itself, but is only one element in the cause of action." In *Hutchinson* v. *Ainsworth*, 73 Cal. 452, 15 P. 82, 84, it was said: "The facts upon which the plaintiff's right to sue is based, and upon which the defendant's duty has arisen, coupled with the facts which constitute the latter's wrong, make up *the cause of action*." (Emphasis by the Court.)

It is clear, therefore, that the Court erred in concluding that petitioner's cause of action arose at the moment of injury. It could not then be enforced. The application of the doctrine of limitation to an unenforceable claim is a legal paradox.

The Clarification Act is strikingly similar to state statutes and municipal ordinances requiring notice and pro-

hibiting court action until a certain time has expired after the giving of notice or until the claim has been rejected. 38 *Am. Jur.* 381-383, *Municipal Corporations*, Sec. 673-674. These statutes have given rise to many decisions interpreting the legislation involved. A review of these authorities is found in 3 *American Law Reports* 2d 704. It is there stated to be the majority view that where the law requires presentation or notice of claim and prohibits the claimant from bringing suit until rejection or until the lapse of a definite period of time after presentation of the claim, the claimant has no cause of action until the expiration of the prescribed time; and that the period of limitations does not begin to run until the end of the statutory prohibition.

Such was the reasoning of the Court of Appeals of the Ninth Circuit in *Thurston* v. *U. S.*, 179 F. 2d 514, in holding that the seaman's cause of action did not arise until disallowance of his claim. The Court below feared that the decision in *Thurston* v. *U. S.* gave the seaman the ability to retain his right to bring suit against the United States for as many years as he thought advantageous to himself (Record, p. 18). We do not so contend and no case so holds (3 *A. L. R.* 2d 721). But that question is not now before the Court. Suffice it to say that the Clarification Act does not prescribe the time within which claim is to be made. Under any circumstances, however, the question is one of fact rather than law for abstract judicial decision. *Aetna Cas. and S. Co.* v. *State* (1935; Tex. Civ. App.), 86 S. W. 2d 826.

The language of the Suits in Admiralty Act and the Clarification Act is clear, plain and unambiguous. There is no need, therefore, to resort to construction or conjecture.

Gorin v. *U. S.*, 111 F. 2d 712, Aff. 312 U. S. 19, 61 S. Ct. 429, Petition for Rehearing denied, 312 U. S. 713, 61 S. Ct. 617.

See also:

Story v. *Snyder*, 184 F. 2d 454, Cert. den. 71 S. Ct. 88;
Browder v. *U. S.*, 312 U. S. 335, 61 S. Ct. 599;
Chung Fook v. *White*, 264 U. S. 443, 44 S. Ct. 361;
Caminetti v. *U. S.*, 242 U. S. 470, 37 S. Ct. 192;
U. S. v. *Goldenberg*, 168 U. S. 95, 18 S. Ct. 3;
Helvering v. *City Bank Farmers Trust Co.*, 296 U. S. 85, 56 S. Ct. 70.

There remains to comment upon the cases cited by respondents in their Brief in Opposition.

Reading Co. v. *Koons*, 271 U. S. 58 (Respondents' Brief in Opposition, p. 7) is clearly distinguishable in that the Federal Employers Liability Act does not contain a provision for filing a claim and its disallowance as a prerequisite to suit.

Dickinson v. *The Mayor*, 92 N. Y. 584 (Respondents' Brief in Opposition, p. 13) does not control our state of facts. There recovery was sought because of a fall on an icy sidewalk. The Court held that since the cause of action existed at common law the statute related only to remedy. The opinion distinguished the case from that of *Fisher* v. *The Mayor*, 67 N. Y. 73, where the cause of action was statutory in origin. There the Court held that adherence to its requirements was essential to maintain it; and that demand was part of the cause of action and without it no cause of action existed.

Dillon v. *Board of Pension Commissioners*, 18 Cal. 2d 427 (Respondents' Brief in Opposition, p. 14), is not dispositive of the point involved herein. It represents a minority view holding that the running of the statute is suspended from the date of presentation until final action by the board. However, the dissenting opinion holds that the statute of limitations is not operative during any period in which the

plaintiff cannot bring suit and that the statute does not begin to run until the claim has been rejected.

In *Wilson* v. *Weber County*, 100 Utah 141 (Respondents' Brief in Opposition, p. 14), suit was brought to recover fees paid under a statute subsequently declared void. This case merely held that since the statute was void, there was no need to make a demand in the first place.

Young v. *City of Seattle*, 30 Wash. 2d 357 (Respondents' Brief in Opposition, p. 14), did not pass on the point involved herein. The Court concluded its opinion by saying: "In view of our holding herein, it is not necessary to discuss the question of when appellants' cause of action accrued, whether at the date of the collision or the date when appellants might institute their action."

Conclusion

Petitioner respectfully contends that under the authorities cited, his cause of action did not accrue until he had the right "to enforce his claim by court action" (War Shipping Administration General Order 32, 8 Fed. Reg. 5414). The ability to pursue a judicial remedy did not exist until his claim was administratively disallowed. Prior to the disallowance he had but a claim. After that it became a cause of action. Petitioner did commence "court action" within two years thereafter.

For these reasons petitioner prays that the judgment of the Court of Appeals for the Third Circuit be reversed.

Respectfully submitted,

PAUL M. GOLDSTEIN,
STARK and GOLDSTEIN,
By PAUL M. GOLDSTEIN,
Attorneys for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1950 51

THOMAS P. McMAHON, PETITIONER

v.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 606

THOMAS P. McMAHON, PETITIONER

v.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 17) is reported at 91 F. Supp. 593. The opinion of the United States Court of Appeals for the Third Circuit is reported at 186 F. 2d 227.

JURISDICTION

The judgment of the Court of Appeals was entered on December 28, 1950. The petition for a

writ of certiorari was filed on March 13, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, in an action brought against the United States under the Suits in Admiralty Act (41 Stat. 525, 46 U. S. C. 741 *et seq.*), pursuant to Section 1(a) of the Clarification Act of March 24, 1943, (57 Stat. 45, 50 U. S. C. App. 1291(a)), the statute of limitations begins to run at the time of injury to the seaman or upon the administrative disallowance of the claim.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the War Shipping Administration (Clarification) Act of March 24, 1943 (57 Stat. 45, 50 U. S. C. App. 1291(a)), of the Suits in Admiralty Act (41 Stat. 525, as amended, 46 U. S. C. 741-752), and of General Order 32 of the Administrator, War Shipping Administration (8 F. R. 5414, 46 CFR § 304.20-304.29), are set forth in the Appendix, *infra*, pp. 18-24.

STATEMENT

1. *Introductory statement.* This is a suit in admiralty brought by a merchant seaman against the United States and the Maritime Commission under the War Shipping Administration (Clarification) Act (57 Stat. 45, 50 U. S. C. App. 1291) and the Suits in Admiralty Act (41 Stat. 525, as amended, 46 U. S. C. 741-752).

In November 1945 and for several months thereafter, petitioner was employed on the *S. S. John Sherman*, then operated by the War Shipping Administration. At that time, virtually the entire American shipping industry constituted a single vast war shipping pool owned by the United States and operated by the War Shipping Administration (cf. *Hust* v. *Moore-McCormick Lines*, 328 U. S. 707, 709-710). Consequently, merchant seamen were technically unclassified civil service employees of the United States (cf. 5 CFR § 6.124(a) and Executive Order 9054, 7 F. R. 837) and as such to be covered by the United States Employees' Compensation Act and the Civil Service Retirement laws, rather than by the Jones Act and the Social Security System.

In order to obviate possible confusion and hardship as a result of the temporary change of status of merchant seamen from private employees to civil servants, Congress enacted the Clarification Act of March 24, 1943 (57 Stat. 45, 50 U. S. C. App. 1291, *infra*, pp. 18-20). The basic purpose of the statute has been epitomized in the Congressional Committee reports:

> The effect of section 1 is to provide that officers and crew members who are employed on behalf of the United States through the War Shipping Administration shall be put on the same basis as seamen in private employment with respect to rights, benefits, and privileges in connection with employment, particularly

in case of death, injury or other casualty. [H. Rep. 107, 78th Cong., 1st sess., p. 2; S. Rep. 62, 78th Cong., 1st sess., p. 11].

While the substantive rights of War Shipping Administration merchant seamen were completely assimilated to merchant seamen in private employ, the Clarification Act provided for two procedural particularities. Actions against the Government were to be governed by the Suits in Admiralty Act, rather than by the Jones Act, and, in order to avoid unnecessary and premature litigation which might adversely affect questions of security, it was provided that no judicial proceedings could be brought by the WSA seaman unless he had first submitted his claim for administrative determination and it had been administratively disallowed.

Pursuant to the direction contained in the Clarification Act, the Administrator, War Shipping Administration, issued his General Order 32 (8 F.R. 5414, 46 CFR §§ 304.20-304.29, *infra*, pp. 20-24), setting forth the details of the procedure governing the filing of such seamen's claims. General Order 32, established, among others, the minimum information to be embodied in the filed claims (§ 304.24, *infra*, p. 22), it provided that claims for personal injuries were to be filed with the ship's general agent (§ 304.25, *infra*, p. 23) and they were presumed to have been disallowed if not acted upon within 60 days after the filing (§ 304.26, *infra*, p. 23).

2. *The proceedings below.* On January 22, 1948, petitioner filed a libel in admiralty (R. 3-9) against the United States of America and the Maritime Commission [1] alleging that in November 1945, during his employment on the *S. S. John Sherman,* he contracted a skin condition and that in December 1945, while on shore leave in France, he was assaulted, suffering injuries to his nose and shoulders. He asked for $15,000 damages and maintenance and care.

Respondents moved to dismiss the libel on three grounds (R. 11-13): (a) that the cause of action had arisen more than two years before the libel was brought (Suits in Admiralty Act, Sec. 5; 46 U. S. C. 745, *infra,* p. 20); (b) that the libel failed to allege that petitioner had submitted his claim for administrative determination and that his claim had been disallowed; (c) that the suit against the Maritime Commission constituted an unauthorized suit against the United States.[2] Apparently, in response to the second branch of this motion, petitioner filed a letter, dated April 17, 1946, which he had received from the ship's general agent (R. 14-16). At best, this letter indicates that the gen-

[1] The functions of the War Shipping Administration were transferred to the Maritime Commission as of September 1, 1946, by the Act of July 8, 1946 (60 Stat. 481, 501).

[2] The Maritime Commission was abolished by Reorganization Plan No. 21 of 1950, Sec. 306 (15 F. R. 3178, 3180; 46 U.S.C.A. 1111 Note) effective May 24, 1950. No successor was substituted for that agency within the six months period provided for in Rule 25(d) F.R.C.P.; hence, the action has abated as against the Maritime Commission (*Snyder* v. *Buck*, 340 U. S. 15), if it ever could be brought against it.

eral agent preliminarily rejected petitioner's claim for his nose injury pending the receipt of additional data which he had requested. The record does not contain any indication to the effect that the claims for petitioner's alleged skin and shoulder conditions were ever filed and rejected administratively.

The decision of the district court (R. 17-21) dealt only with the issue of limitations and dismissed the complaint because it had been brought more than two years after plaintiff had suffered his alleged injuries[3] (R. 22).

Petitioner appealed to the United States Court of Appeals for the Third Circuit,[4] which affirmed the order of the district court. (186 F. 2d 227).

ARGUMENT

Petitioner asks review of the ruling below on the ground that it conflicts with *Thurston* v. *United States,* 179 F. 2d 514 (C. A. 9), and presents a question of general importance which this Court should decide. We submit that the decision below is clearly correct under this Court's decisions and that the conflict with *Thurston* v. *United States, supra,* is without significance in view of the fact that the question lacks continuing importance.

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[3] The motion to dismiss was denied with respect to items not significant here, viz., maintenance and care subsequent to January 22, 1946, and damages for failure to provide maintenance and care after January 22, 1946.

[4] The order of the district court was appealable although it disposed of less than the entire libel (28 U. S. C. 1292(3)).

1. The narrow question involved in this petition is whether the two year statute of limitations of the Suits in Admiralty Act began to run when petitioner allegedly suffered his injuries in November and December 1945, or sixty days after the filing of petitioner's administrative claim, a procedural act the time for which was left by the statute completely within petitioner's control. This problem has been settled by this Court for more than a quarter of a century adversely to the position taken by the petitioner.

In *Reading Co.* v. *Koons*, 271 U. S. 58, this Court was confronted with the analogous question whether in an action for wrongful death brought under the Federal Employers' Liability Act (35 Stat. 65, as amended, 45 U. S. C. 51 ff) [5] the statute of limitations begins to run at the time of the fatal accident or upon the appointment of the administrator. This Court refused to be drawn into general discussions of the nature of a cause of action [6] and the time of its accrual (at 61-62) but held that the question before it must be deter-

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[5] Decisions rendered under the Federal Employers' Liability Act are directly apposite to this case. The Clarification Act gives seamen the substantive rights granted by the Suits in Admiralty Act. (Act of March 9, 1920 c. 95, 41 Stat. 525, 46 U. S. C. 741 ff). The rights under the latter are those the seaman would have under the Jones Act (Act of June 5, 1920, Sec. 33, 41 Stat. 1007, 46 U. S. C. 688), which in turn refers expressly to the Federal Employers' Liability Act. Cf. *Piascik* v. *United States*, 65 F. Supp. 430 (S.D.N.Y.).

[6] Cf. the warning issued by this Court in *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 67-68: "The analogy [to the concept 'cause of action'] is helpful, yet it will confuse, instead of helping, if we do not insist at the beginning

mined "in the light of the general purposes of the statute * * * and with due regard to those practical ends which are to be served by any limitation of the time within which an action must be brought." The Court then pointed out that it is the very purpose of a statute of limitations that there should be an end to litigation "at some definitely ascertainable period." This purpose would be completely frustrated if the statute were construed in a way that the plaintiff could delay the accrual of the "cause of action" by failing to perform an act over which he has complete and exclusive control. [Application for the appointment of an administrator in the *Koons* situation, filing of the administrative claim in the instant case.] If this were the law, the period of limitations "might as well have been omitted from the statute" (p. 65).

The considerations, which lead this Court to hold that the statutory period under Federal Employers' Liability Act begins to run upon the happening of the accident and not upon the performance by the plaintiff of a procedural prerequisite, apply with even greater force to cases arising under the

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upon a definition of our terms or at least a recognition of their shifting meanings. A 'cause of action' may mean one thing for one purpose and something different for another. It may mean one thing when the question is whether it is good upon demurrer, and something different when there is a question of the amendment of a pleading or of the application of the principle of *res judicata*. * * * This court has not committed itself to the view that the phrase is susceptible of any single definition that will be independent of the context or of the relation to be governed."

Clarification Act. The latter present evidentiary problems even more serious than the cases involving the Federal Employers' Liability Act where the accident is near at hand and the defendant usually knows of it, is able to investigate it, to preserve the evidence, and to keep track of the witnesses. Admiralty claims, on the other hand, arise in the four corners of the world with the ensuing dissipation of evidence. Moreover, they are not confined to those arising on board ship as illustrated by petitioner's count based on an alleged assault in a French port. Finally, the Clarification Act constitutes a waiver of the Government's sovereign immunity; hence, a construction which nullifies its limitations provisions is not to be favored. *United States* v. *Michel*, 282 U. S. 656, 659; *United States* v. *Sherwood*, 312 U. S. 584, 590.

The court below was correctly applying the controlling decisions of this Court when it refused to interpret the Clarification Act in a way in which petitioner "merely by deferring the filing of his administrative claim could retain his right to bring suit against the United States for as many years as he thought advantageous to himself" (186 F. 2d 227, 230).

2. The petitioner relies upon the decision of the United States Court of Appeals for the Ninth Circuit in *Thurston* v. *United States* (179 F. 2d 514), which construed the Clarification Act to the effect that the statute of limitations begins to run

only upon the rejection of the administrative claim, and upon a number of unrelated cases generally discussing the time of the accrual of a cause of action (Pet. 13-16). We believe that the *Thurston* decision was clearly wrong, and that in any event the problem as to the rights of seamen during the period of government operation is a temporary one no longer of sufficient importance to warrant review.

The decision in the *Thurston* case was based on three considerations:

First, it held that the Clarification Act being an instance of "social legislation" must be construed in favor of the seaman in every respect, including the issue of limitations. This reasoning fails to realize the distinction between the preferential substantive rights of merchant seamen as wards of the courts, which are entitled to a liberal construction, and the procedural provisions prescribed by Congress, which must be construed strictly and reasonably, even where merchant seamen are involved, since they involve a waiver of sovereign immunity.[7] This dichotomy between the substantive rights of merchant seamen, which were carefully preserved by the Clarification Act, and the procedural provisions, which were to be adapted to the circumstance that the sovereign is the defendant, was well recognized by the Congress and was stressed in the pertinent Committee Reports. See

[7] See *supra*, p. 9.

e.g. H. Rep. No. 107, 78th Congress, 1st session on p. 21:

> The various rights and remedies under statute and general maritime law with respect to death, injury, illness, and other casualty to seamen, have been rather fully set forth hereinabove. Under clause 2 of section 1(a) these *substantive rights* would be governed by existing law relating to privately employed seamen. The only modification thereof arises from the *remedial provision* that they shall be enforced in accordance with the provisions of the Suits in Admiralty Act. *This procedure is appropriate in view of the fact that the suits will be against the Government of the United States.*[8] [Italics supplied.]

Second, in trying to determine the time when the seaman's claim accrued, the Ninth Circuit fell back upon the concept "cause of action" as it is used for the purposes of pleading. In so doing, it failed to follow the rationale of this Court in the *Koons* case, that the accrual of a cause of action could not be determined abstractly, but rather that the time of the accrual must be derived from the general purposes of the statute involved and of its limitation provisions. The *Thurston* case constitutes a typical example of the difficulties which necessarily ensue when a court disregards the admonition of Mr. Justice Cardozo in *United States* v.

[8] To the same effect. H. Rep. No. 2572, 77th Cong., 2nd sess., p. 14; See S. Rep. 62, 78th Cong., 1st sess., p. 11; S. Rep. 1813, 77th Cong., 2d sess., p. 6. See *Cosmopolitan Co.* v. *McAllister*, 337 U. S. 783, 792.

Memphis Cotton Oil Co., supra, p. 7, fn. 6, and seeks to solve a problem on the basis of a definition of the term "cause of action" without making proper allowance for its shifting meanings.[9]

Third, the Ninth Circuit erroneously inferred from the absence of a time limit in which the administrative claim must be filed, that it could be submitted at any time—even several years later—because "an apparently slight injury may not develop into a serious disqualification in the seaman's service till many months after he is hurt" (at 516). This line of reasoning completely misinterprets the purpose of Congress in requiring the submission of an administrative claim; it also runs counter to the well-established body of law interpreting the many statutes requiring notice to the sovereign or one of its subdivisions before suit may be brought.

The reason why Congress required the submission of an administrative claim appears clearly from the Committee Reports, which state unambiguously:

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[9] Other courts have avoided this pitfall by the common sense holding that for the purposes of limitations the concept "cause of action" does not include those purely procedural steps which the plaintiff must take in order to gain access to the courts, but which do not affect the substantive liability of the prospective defendant. See *e.g., Fuller* v. *State Highway Commissioner,* 140 Kan. 558; *Wilson* v. *Weber County,* 100 Utah 141. The federal courts reached similar results under the War Risk Insurance legislation. *United States* v. *Sligh,* 24 F. 2d 636, 638 (C.A. 9), vacated after amendment of the statute, 277 U. S. 582; *Wilson* v. *United States,* 70 F. 2d 176, 179 (C.A. 10).

> To prevent unnecessary or premature litigation against the United States, it is required that before suit there shall be an administrative disallowance of the same in accord with rules or regulations to be prescribed by the Administrator, War Shipping Administration. [H. Rep. 2572, 77th Cong., 2d sess., p. 14; H. Rep. 107, 78th Cong., 1st sess., p. 21; S. Rep. 62, 78th Cong., 1st sess., p. 14.]

This purpose of the notice provision coincides with the purpose generally ascribed to similar state legislation. Thus, in the leading case of *Dickinson* v. *Mayor*, 92 N. Y. 584, 590, the New York Court of Appeals held:

> The intent and purpose of section 105 of the charter [requiring the giving of notice of claims and providing for a waiting period] was mainly to enable the comptroller to settle claims against the city and thereby *save unnecessary costs and expenses in the litigation which must ensue. We think it was not intended to indefinitely extend the time* in all cases within which an action might be brought against the city and thus put in the power of the claimant to delay, without any limitation whatever, * * *. The statute was for the benefit of the city and not for the benefit of the claimant. *It was not designed to repeal the statute of limitations as to the city* * * *. [Italics supplied.]

Such notice and waiting period statutes have been given the same interpretation in other jurisdic-

tions: *Dillon* v. *Board of Pension Commissioners*, 18 Cal. 2d 427; *Wilson* v. *Weber County*, 100 Utah 141 (overruled on another ground in *Shea* v. *State Tax Comm.*, 101 Utah 209); *Young* v. *City of Seattle*, 30 Wash. [2d] 357.[10]

3. The conflict between the Third and Ninth Circuits in this and *Thurston* cases is not of the type which calls for the supervisory intercession of this Court.[11] The present case was correctly decided below in full accord with the applicable precedents of this Court. The Second Circuit has already disagreed with it, *Gregory* v. *United States*, 187 F. 2d 101, and the district courts, too, have refused to be guided by it. *Sloand* v. *United States*, 93 *F. Supp.* 83 (W.D. N.Y.); *MacInnes* v. *United States*, 93 F. Supp. 987 (D.

[10] A related question is the problem of whether the two year statute of limitations of the Suits in Admiralty Act is to be extended by the period—not to exceed sixty days—during which a claim is pending for administrative determination. Some federal statutes (Act of May 29, 1928, 45 Stat. 964, 38 U.S.C. 445 par. 2 [claims for servicemen's life insurance], 28 U.S.C. 2401 (b) [Federal Tort Claims]) and state statutes (cf. *Brehm* v. *Mayor etc. of New York*, 104 N.Y. 186, *Dillon* v. *Board of Pension Commissioners*, *supra*, and *Young* v. *Seattle*, *supra*) expressly provide for such extension of the period of limitations. In the absence of such express provisions, however, the waiting period does not extend the statutory period by implication. The purpose of the two year statute of limitations is not to give the claimant 730 days in which to consider whether or not to bring the action but "that there may be, *at some definitely ascertainable period*, an end to litigation," *Reading Co.* v. *Koons*, 271 U. S. 58, 65 (emphasis supplied).

[11] The United States did not apply for a review of the *Thurston* case, because Thurston, aware of the uncertainties of that decision, offered to settle his $15,000 claim for about $600.

Mass.).[12] The problem no longer appears to be of great practical importance. The shipping industry returned to private operation a number of years ago; thus, it is unlikely that there will be much new litigation under the Clarification Act; and only a few cases involving the point are presently pending. Should a new emergency compel the Government again to take over the merchant marine, should the rights of merchant seamen under such conditions again be governed by the Clarification Act rather than by some new statute, and should the *Thurston* decision then be followed, this Court will have ample opportunity to exercise its supervisory powers. In these circumstances, there is no present need for a review of the decision below. Cf. *The Arlington* v. *Mayer*, 340 U.S. 965 (certiorari denied despite admitted conflict in interpretation of statute of temporary duration).

4. Finally, this case is not an appropriate one for review, since the decision below should be affirmed on the additional ground that petitioner never submitted an administrative claim as required by the Clarification Act, *infra*, pp. 18-20. The libel failed to allege that petitioner had submitted an administrative claim and that it had been rejected. These statements are of a jurisdictional nature. *Fox* v. *Alcoa S. S. Co.*, 143 F. 2d 667 (C.A. 5); *Rodinciuc* v. *United States*, 175 F. 2d 479 (C.A. 3), certiorari

[12] The decision of the District Court in the *Gregory* case (*supra*) was not based on the Clarification Act.

denied, 338 U. S. 895. When a motion was made to dismiss the complaint on this ground, petitioner did not amend the libel to include an allegation of the filing of the claim and its rejection. Nor did he submit a copy of the claim filed by him, although a copy should be available since the petitioner's correspondence apparently was conducted by his attorney (R. 15-16). Instead, he filed the copy of a letter (R. 14-16) received by his counsel from the ship's general agent. A careful reading of this letter discloses that it is far from supplying the missing allegations. On the contrary, it seems to explain why petitioner is so reluctant to allege straight-forwardly that he filed a claim for all the injuries set forth in the libel and why he did not submit a copy of the claim filed by him.

At best, the letter permits the inference that in connection with a request to withdraw desertion charges against petitioner,[13] some reference was made to petitioner's nurse condition and that the general agent preliminarily denied liability because the letter did not contain the data required by General Order 32, Section 304.24 (*infra*, p. 22) and thus did not constitute a claim within the meaning of the Clarification Act. *Rodinciuc* v. *United States*, 175 F. 2d 479 (C. A. 3). Obviously, no final rejection was intended since the letter promised further consideration upon receipt of

[13] The request was reluctantly granted because it was considered more important that the ship's captain leave port on a new voyage than remain in Philadelphia in order to press the charges against petitioner.

the additional information requested (R. 16). Moreover, it did not follow the rejection form set forth in General Order 32, Section 304.27 (*infra*, p. 24). But most important of all, it does not contain any reference to the shoulder and skin conditions alleged in the libel.

The inference is obvious: Petitioner never filed a claim for the latter two grievances, and his complaint about the injury to his nose was submitted in so vague a form that it did not even measure up to the liberal requirements of General Order 32, Section 304.24; hence, there was no exhaustion of the administrative remedy prescribed by the Clarification Act. (*Rodinciuc* v. *United States, supra*). It follows that the libel was subject to dismissal on this alternate ground.

CONCLUSION

The decision below is correct and the conflict with the Ninth Circuit's decision in *Thurston* v. *United States, supra*, does not justify the exercise of this Court's supervisory jurisdiction. It is respectfully submitted that the petition for a writ of certiorari should, therefore, be denied.

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APRIL 1951.

APPENDIX

1. The Clarification Act of March 24, 1943, 57 Stat. 45, 50 U.S.C. App. 1291 provides in pertinent part as follows:

> * * * (a) officers and members of crews (hereinafter referred to as "seamen") employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration shall, with respect to (1) laws administered by the Public Health Service and the Social Security Act, as amended by subsection (b) (2) and (3) of this section; (2) death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation, or claims arising therefrom not covered by the foregoing clause (1); and (3) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels. Such seamen, because of the temporary wartime character of their employment by the War Shipping Administration, shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act, as amended; the Civil Service Retirement Act, as amended; the Act of Congress approved March 7, 1942 (Public Law 490, Seventy-seventh Congress); or the Act entitled "An Act to provide benefits for the injury, disability, death, or detention of employees of contractors with the United States and certain other persons or reimburse-

ment therefor", approved December 2, 1942 (Public Law 784, Seventy-seventh Congress). Claims arising under clause (1) hereof shall be enforced in the same manner as such claims would be enforced if the seaman were employed on a privately owned and operated American vessel. Any claim referred to in clause (2) or (3) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. Any claim, right, or cause of action of or in respect of any such seaman accruing on or after October 1, 1941, and prior to the date of enactment of this section may be enforced, and upon the election of the seaman or his surviving dependent or beneficiary, or his legal representative to do so shall be governed, as if this section had been in effect when such claim, right, or cause of action accrued, such election to be made in accordance with rules and regulations prescribed by the Administrator, War Shipping Administration. Rights of any seaman under the Social Security Act, as amended by subsection (b) (2) and (3), and claims therefor shall be governed solely by the provisions of such Act, so amended. When used in this subsection the term "administratively disallowed" means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. When used in this subsection the terms "War Shipping Ad-

ministration" and "Administrator, War Shipping Administration" shall be deemed to include the United States Maritime Commission with respect to the period beginning October 1, 1941, and ending February 11, 1942, and the term "seaman" shall be deemed to include any seaman employed as an employee of the United States through the War Shipping Administration on vessels made available to or sub-chartered to other agencies or departments of the United States.

2. Section 5 of the Suits in Admiralty Act, 41 Stat. 525, as amended by the Act of June 30, 1932, 47 Stat. 420, 46 U.S.C. 745, provides in pertinent part as follows:

> suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided,* That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; all other suits hereunder shall be brought within two years after the cause of action arises * * *

3. General Order 32 of the War Shipping Administration, issued April 22, 1943 (8 F.R. 5414, 46 CFR § 304.20-304.29) provides in pertinent part as follows:

> § 304.20. *Statutory provisions.* Officers and members of crews (hereinafter referred to as "seamen") employed on United States or foreign flag vessels owned by or under bareboat charter to the War Shipping Administration and operated by an Agent under a Gen-

eral Agency form of Service Agreement, with respect to the claims hereinafter specifically enumerated, are given all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on American flag vessels privately owned and operated. Under such act, court action (a) may not be instituted to enforce such a claim until it shall have been administratively disallowed, in whole or in part, and (b) must be brought pursuant to the Suits in Admiralty Act.

304.21. *Claims which must be submitted for allowance prior to suit.* Claims, unless covered by the Social Security Act or laws administered by the Public Health Service, must be submitted for allowance prior to instituting court action thereon in cases of death, injury, illness, maintenance and cure, loss of effects, detention, repatriation, or claims arising therefrom; in cases relating to the collection of wages and bonuses and the making of allotments, when made against the United States of America, the War Shipping Administration, the Administrator thereof, or any other person for whom the United States of America or War Shipping Administration is responsible; in cases arising under the War Shipping Administration Crew Life and Injury Policy, the Second Seamen's War Risk Policy, and those arising under other Decisions of the Maritime War Emergency Board, in so far as such claims are made against the War Shipping Administration, provided they are made by or on behalf of seamen who, at the time

such claims arose, were employees of the United States through the War Shipping Administration, or by on behalf of their surviving dependents or beneficiaries or legal representatives.

§ 304.22. *Time of accrual.* Sections 304.20 to 304.29 apply to any claim specified in § 304.21 which:

(a) Arose on or after March 24, 1943; or

(b) Accrued on or after October 1, 1941, and prior to March 24, 1943, if the seaman or his surviving dependent or beneficiary or legal representative elects, as provided by §§ 304.28 and 304.29, to enforce such claim in the same manner as it would be enforced if it arose after the date of the enactment of Public Law 17—78th Congress (57 Stat. 45).

§ 304.23 *Court action; condition precedent.* No seaman or his surviving dependent or beneficiary or legal representative, having a claim under the provisions of §§ 304.21 and 304.22, shall commence a court action for the enforcement of such claim, unless such claim has been filed by him or on his behalf or by or on behalf of his surviving dependent or beneficiary or legal representative as provided in §§ 304.24 and 304.25 and has been administratively disallowed by the person or agency with whom it was so filed.

§ 304.24. *Claim, contents.* The claim need not follow any particular form, but it shall be in writing. It shall contain such particulars as are reasonably necessary as a basis for the allowance or administrative disallowance of such claim and should include, with respect to

the seaman in question, his home address, date of birth, place of birth, certificate of identification number, as well as all the facts and circumstances leading up to and surrounding the happening of the event out of which it is alleged the claim arose.

§ 304.25. *Claims, with whom filed.* Claims based upon any decision of the Maritime War Emergency Board or any insurance policy issued by the War Shipping Administration, excluding claims for loss of or damage to personal effects (if the insured is alive), bonus, and detention and repatriation benefits, shall be filed with the Chief Adjuster, Division of Wartime Insurance, War Shipping Administration, 99 John Street, New York City, or such other agencies or persons as may be designated by the Chief Adjuster for the purpose of determining the allowance or disallowance of such claim. All other claims, including claims for loss of or damage to personal effects (if the insured is alive), bonus, and detention and repatriation benefits, shall be filed with the General Agent of the vessel with respect to which such claims arose, or such Agent's Berth sub-agent to which the former may refer the claim for handling.

§ 304.26. *Claim, when presumed administratively disallowed.* If the person or agency with whom the claim is filed, in accordance with the directions contained herein, fails to notify the claimant in writing of a determination upon such claim, within sixty days following the date of filing thereof, the claim shall be presumed to have been administratively disal-

lowed, and the claimant shall be entitled to enforce his claim by court action.

§ 304.27. *Administrative disallowance, notice of.* In those cases in which the person or agency to whom the claim has been referred, determines that it shall be administratively disallowed, in whole or in part, such person or agency shall mail to the last known address of the claimant, or deliver or cause to be delivered personally to the latter or his agent, a letter in substantially the following form:

Dear Sir:

Reference: (Name of claimant—Name of vessel)

This is to certify that —(Claimant)—filed a written claim with the undersigned on—(Date received)—; that the claim involved or arose out of.

(here insert facts sufficient to identify the claim);

that such claim has been administratively disallowed, in accordance with the rules and regulations prescribed by the Administrator under the provisions of section 1(a) of Public Law 17—78th Congress (H.R. 133).

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No. 17

In the Supreme Court of the United States

OCTOBER TERM, 1951

THOMAS P. McMAHON, PETITIONER

v.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS

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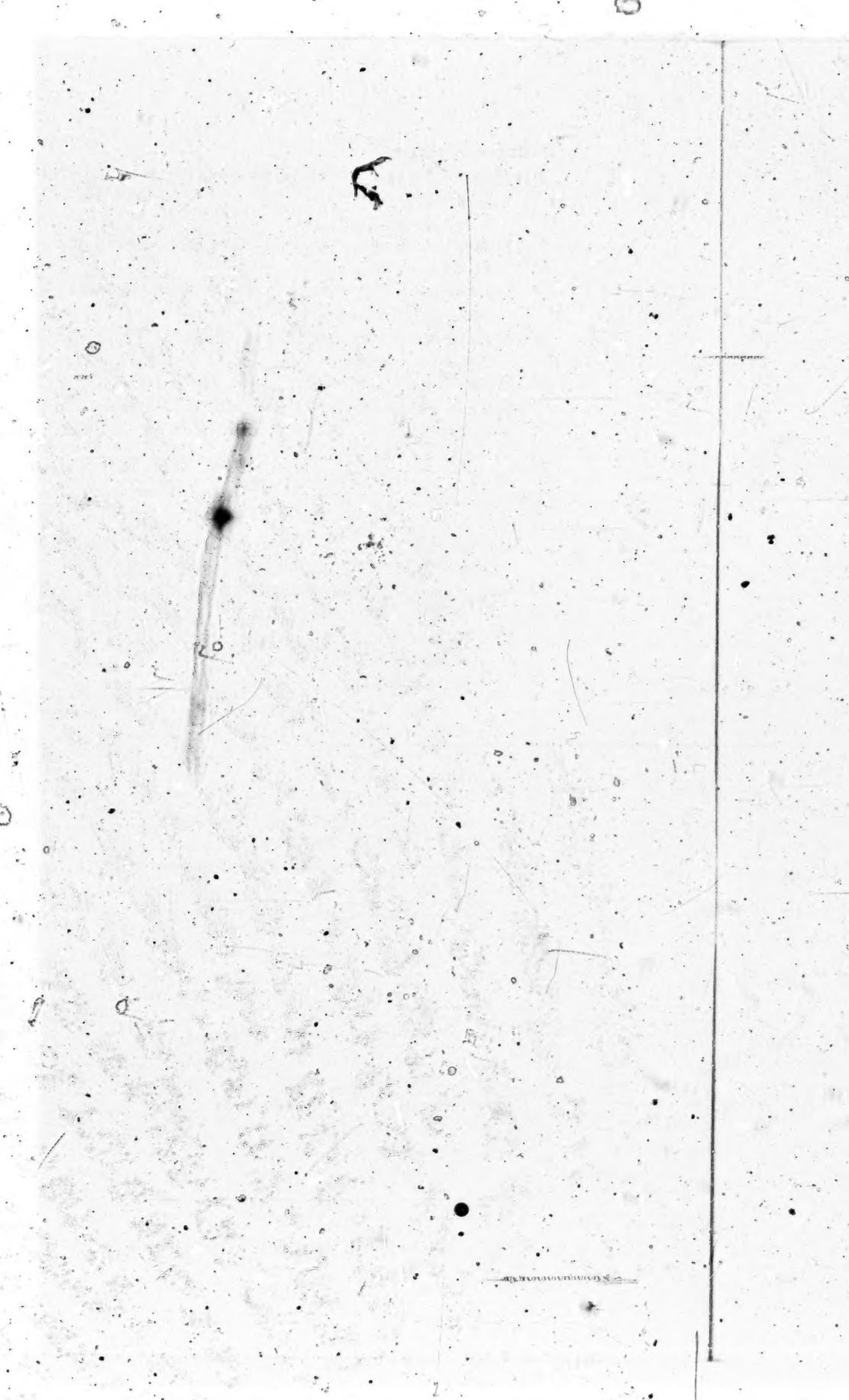
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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 17

THOMAS P. McMAHON, PETITIONER

v.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 8–10) is reported at 91 F. Supp. 593. The opinion of the United States Court of Appeals for the Third Circuit (R. 13–18) is reported at 186 F. 2d 227.

JURISDICTION

The judgment of the Court of Appeals was entered on December 28, 1950 (R. 18–19). The petition for a writ of certiorari was filed on March 13, 1951, and granted on May 14, 1951

(R. 19). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, in an action brought against the United States under the Suits in Admiralty Act (41 Stat. 525, 46 U. S. C. 741 *et seq.*), pursuant to Section 1 (a) of the Clarification Act of March 24, 1943 (57 Stat. 45, 50 U. S. C. App. 1291 (a)), the statute of limitations begins to run at the time of injury to the seaman or upon the administrative disallowance of the claim.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the War Shipping Administration (Clarification) Act of March 24, 1943 (57 Stat. 45, 50 U. S. C. App. 1291 (a)), of the Suits in Admiralty Act (41 Stat. 525, as amended, 46 U. S. C. 741–752), and of General Order 32 of the Administrator, War Shipping Administration (8 F. R. 5414, 46 CFR §§ 304.20–304.29), are set forth in the Appendix, *infra*, pp. 28–34.

STATEMENT

On January 22, 1948, petitioner filed a libel in admiralty (R. 2–4) against the United States of America and the Maritime Commission alleging that in November 1945, during his employment on the S. S. *John Sherman*, a vessel owned and operated by the War Shipping Administration, he contracted a skin condition and that in De-

cember 1945, while on shore leave in France, he was assaulted, suffering injuries to his nose and shoulders. He asked for $15,000 damages and maintenance and cure.

Respondents moved to dismiss the libel on the ground, *inter alia* (R. 5–6), that the cause of action had arisen more than two years before the libel was brought (Suits in Admiralty Act, Sec. 5; 46 U. S. C. 745, *infra*, p. 30).[1] The decision of the district court (R. 8–10) passed only on the issue of limitations and dismissed the libel because it had been brought more than two years after plaintiff had suffered his alleged injuries[2] (R. 10). Petitioner appealed to the United States Court of Appeals for the Third Circuit[3]

[1] Respondents also contended that the libel failed to allege that petitioner had submitted his claim for administrative determination and that his claim had been disallowed. After oral argument on the motion to dismiss (R. 1), petitioner's attorney filed a copy of a letter of the Government's general agent dated April 17, 1946 (R. 6–7), for the purpose of supplying this missing jurisdictional statement. This letter was accepted by both courts below as establishing the submission and disallowance of the claim as required by the statute and regulation. The other asserted ground of dismissal—lack of consent to suit against the Maritime Commission—would not affect the right to proceed against the United States.

[2] The motion to dismiss was denied with respect to items not significant here, *viz*, maintenance and cure subsequent to January 22, 1946, and damages for failure to provide maintenance and cure after January 22, 1946.

[3] The order of the district court was appealable although it disposed of less than the entire libel (28 U. S. C. 1292 (3)).

which affirmed the order of the district court (R. 13–18; 186 F. 2d 227).

SUMMARY OF ARGUMENT

Section 1 (a) of the Clarification Act gives to government-employed merchant seamen the same rights against the United States for death or injuries as privately employed seamen have against their employers. The Act further provides that such claims, if administratively disallowed, shall be enforced against the United States under the Suits in Admiralty Act. Section 5 of the latter Act limits the jurisdictional grant to suits brought within two years after the cause of action arises. Here, suit was commenced more than two years after the injury allegedly occurred and petitioner's substantive cause of action accrued, but less than two years after the claim had been administratively denied. The question in the case, therefore, is whether the cause of action "arises" at the time of the injury or only upon the denial of the claim. The court below correctly decided that the cause of action dated from the injury for all purposes and that petitioner's suit therefore was barred by limitations.

I

The Court of Appeals for the Second Circuit in *Gregory* v. *United States*, 187 F. 2d 101, and the Court of Appeals for the First Circuit in

MacInnes v. *United States*, 189 F. (2d) 733, agree with the view of the court below. Their opinions accord fully with the reasoning of *Reading Co.* v. *Koons*, 271 U. S. 58, where this Court, in dealing with the limitation provisions of the Federal Employees Liability Act, held that the cause of action arose at the time of the injury and not when the claimant was first able to bring suit. The expression "when a cause of action arises" is not a static concept to be applied mechanically but can vary with the function which is to be served in a particular situation. *United States* v. *Dickinson*, 331 U. S. 745, 748; *Reading Co.* v. *Koons, supra.* The *Koons* case pointed out that the proper approach to a problem of this character is to examine the general purpose and practical ends to be achieved by the statute, and in particular by its limitation provisions. In the light of the rationale of that case, the decision below, as well as those of the First and Second Circuits on the same question, is clearly correct.

The scheme of the Clarification Act providing for the submission of a written claim based on an existing substantive cause of action to the administrative authority was intended solely to afford opportunity for administrative disposition without suit and not to extend the time to sue in excess of the two years from the injury already provided by the Suits in Admiralty Act. A plain reading of the Act, the committee reports thereon,

and the regulations adopted by the Administrator demonstrates that this was clearly the purpose.

The classical aim of statutes of limitations is to put an end to litigation. That purpose would be defeated if a claimant were permitted to postpone the time from which the statute would run. Where the substantive cause of action accrues and the Government's liability is fixed, as here, at the time of the injury, the purpose of the limitations provision would be frustrated if its commencement could be indefinitely postponed by a claimant through the device of refraining from presenting his administrative claim. Yet, if his cause of action did not arise within the meaning of Section 5 of the Suits in Admiralty Act until his claim had been rejected, he would be in a position at least to double the two-year limitation time. We submit that the provision of the Clarification Act, requiring a claimant to submit his claim for administrative disposition before enforcing it by suit, envisaged no such result. The decision below meets all the tests laid down by this Court in the *Koons* case and, accordingly, should be affirmed.

II

Petitioner has made no contention that the statute of limitations is tolled during the pendency of an administrative claim. Such a contention could not avail him, since the record is bare of allegation or proof as to the period during which his claim was pending. In any

event, there is no support in the statute or in general principles for such a tolling theory.

ARGUMENT

Section 1 (a) of the Clarification Act[4] gives to seamen, employed by the United States on government-owned merchant vessels, the same rights against the United States with respect to "death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation" and "collection of wages and bonuses and making of allotments", which seamen employed on privately owned and operated American vessels have against the owners thereof. The Act provides that "any claim" of the kinds just referred to shall, "if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act." The Clarification Act further provides that "the term 'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration." The statutory scheme was designed to permit settlement prior to suit; it is necessarily based on the theory that a cause of action accrued prior to the denial of the claim, and not that it arises only upon an administrative determination which is to be reviewed by the courts.

[4] Act of March 24, 1943, 57 Stat. 45, c. 26, 50 U. S. C. App. 1291 (a).

Section 5 of the Suits in Admiralty Act, as it stood when this libel was filed, imposes the following limitation upon the grant of jurisdiction for suit against the United States:[5]

> That suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided,* That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises

Such provisions have always been held to mean two years from the injury. *Moore* v. *Atchison, Topeka & S. F. R. Co.,* 187 Okla. 534; Restatement of the Law of Torts, Sec. 899, Comment c.

Petitioner was allegedly injured during November and December 1945, and his administrative claim was denied April 17, 1946. At any date thereafter he could have brought suit, but he delayed doing so until January 22, 1948, more than twenty-one months after the administrative denial and more than two years after his alleged injuries. Thus, the question for decision is whether a libelant's cause of action "arises" under the Suits in Admiralty Act, within the meaning of Section 5, when his alleged injuries occur and his substantive cause of action accrues, or only there-

[5] Act of March 9, 1920, c. 95, 41 Stat. 525, 526, 46 U. S. C. 745.

after when his claim has been administratively denied. If the former, more than two years have here elapsed between the time the cause of action arose and the time the suit was brought and the suit was therefore barred by limitations. If, on the other hand, the cause of action did not "arise" from the injury but only from the administrative denial, the suit was brought within the two-year period and was timely.

The court below, together with Courts of Appeals for the First and Second Circuits,[6] has held that the "cause of action" arises for limitation purposes when petitioner suffered his injuries and thus acquired his substantive cause of action, although as a procedural prerequisite he had to give notice in order to afford an opportunity for administrative settlement before he could maintain suit. Petitioner's argument, supported by the decision of the Ninth Circuit in *Thurston* v. *United States*, 179 F. 2d 514, is that a "cause of action" does not "arise" until a court may immediately give judgment upon it. We submit that petitioner's contentions, and the *Thurston* case upon which he founds them, are unsound as contrary to the statutory theory that a substantive cause of action exists prior to the denial of claim. Accordingly, the court below, in common with the First and Second Circuits, correctly answered the question.

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[6] *Gregory* v. *United States*, 187 F. 2d 101 (C. A. 2); *MacInnes* v. *United States*, 189 F. 2d 733 (C. A. 1).

I

THE STATUTE OF LIMITATIONS BEGAN TO RUN WHEN PETITIONER ALLEGEDLY SUFFERED INJURIES, NOT WHEN HIS CLAIM WAS ADMINISTRATIVELY DENIED

A. *Petitioner's substantive rights became fixed, and his cause of action arose, on the date of the alleged injuries.*—The court below in the instant case, as well as the Court of Appeals for the Second Circuit in *Gregory* v. *United States*, 187 F. 2d 101, and the Court of Appeals for the First Circuit in *MacInnes* v. *United States*, 189 F. 2d 733, concluded that the statutory scheme for affording a seaman relief by suit against the United States for injuries sustained as a result of his employment was to provide him with a period of two years from the date of injury within which to bring suit. The one restriction upon his right to prosecute suit is that within the two years he is required to give notice of his claim to the administrative agency so as to afford that agency an opportunity to effect an administrative settlement and thus avoid suit. The statutory scheme, as implemented by the regulations, confines the time for administrative consideration to a maximum of 60 days.[7] Thus

[7] The Clarification Act defines the term "administratively disallowed" as meaning a "denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration" (Appendix, p. 29, *infra*). Section 304.26 of General Order 32 of the War Shipping Administration (Appendix, p. 33, *infra*) provides

if the seaman chose he might wait until at least 61 days before the two-year limitation expired, file his claim and, if it were not acted upon favorably, commence suit on the last day of the two-year period. Cf. *Manderscheid* v. *United States,* 88 F. Supp. 232, 234 (N. D. Cal.). Or he could file his notice almost immediately after his substantive cause of action accrued and have approximately twenty-two months within which to sue.

The substantive cause of action arises at the time of the injury, as three courts of appeals have held, and because the only jurisdiction for suit against the United States is that afforded by the Suits in Admiralty Act, the suit must, by reason of Section 5 of that Act, be brought within two years from that date. Failure so to do, these courts hold, precludes recovery as no jurisdiction exists under the Suits in Admiralty Act to entertain suit more than two years after the injury occurred. The rationale of those holdings follows that of this Court in *Redding Co.* v. *Koons,* 271 U. S. 58. There the question was whether, in a death action brought under the Federal Employers' Liability Act, 35 Stat. 65 (45 U. S. C. 51–56), the cause of action arose at the time of the injury or only upon the appointment of an administrator who could bring

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that if the claimant has not been notified in writing of administrative action taken on his claim within 60 days after it was filed "the claim shall be presumed to have been administratively disallowed, and the claimant shall be entitled to enforce his claim by court action."

suit. As in the present situation, there was a diversity of views in the lower courts. It was argued in support of one view that, as suit could not be brought until an administrator was appointed, no cause of action arose until such appointment. The other view was that, when all the events which determined the liability had occurred, the cause of action arose or came into existence for limitation as well as other purposes even though judicial proceedings could not be brought until some additional action had been taken by the plaintiff which gave standing to sue (p. 61). In the *Koons* case this Court, concluding that the statutory word "accrued" was susceptible of such a variety of meanings that it afforded no answer to the question, held that the problem must be resolved by a practical approach. Pointing out that the interested claimants (wife, child, etc.) could procure the appointment of an administrator within the period of limitations, it said (pp. 62–63):

> Thus, at the death of decedent there are real parties in interest who may procure the action to be brought; and there are no such practical inconveniences or necessary delays as would lead to the conclusion that the word "accrued," as used in the statute, cannot be taken to refer to the time of death.

On the other hand, it found that serious practical inconveniences would result from the view that the time when the statute began to run was

dependent on some action of the claimants. It said (pp. 64–65):

> Every practical consideration which would lead to the imposition of any period of limitation, would require that the period should begin to run from the definitely ascertained time of death rather than the uncertain time of the appointment of an administrator. * * * No reason appears, if the opinion of the court below is followed, why the time might not have been extended indefinitely by the failure to apply for administration. The only persons who can procure the appointment of an administrator are ordinarily spouse, next of kin, or creditors of the decedent. Certainly the common carrier would have no standing to make the application. The very purpose of a period of limitation is that there may be, at some definitely ascertainable period, an end to litigation. If the persons who are designated beneficiaries of the right of action created may choose their own time for applying for the appointment of an administrator and consequently for setting the statute running, the two-year period of limitation so far as it applies to actions for wrongful death might as well have been omitted from the statute. An interpretation of a statute purporting to set a definite limitation upon the time of bringing action, without saving clauses, which would, nevertheless, leave defendants subject indefinitely to actions

> for the wrong done, would, we think, defeat its obvious purpose. There is nothing in the language of the statute to require, or indeed to support, such an interpretation.

The considerations which led this Court to hold that the statutory period under Federal Employers' Liability Act begins to run upon the happening of the accident, and not upon the performance by the plaintiff of a procedural prerequisite, apply with even greater force to cases arising under the Clarification Act. Thus, the latter present more serious evidentiary problems. In cases involving the Federal Employers' Liability Act where the accident is near at hand and the defendant usually knows of it, is able to investigate it, to preserve the evidence, and to keep track of the witnesses. Admiralty claims, on the other hand, arise in the four corners of the world, with ensuing dissipation of evidence; they are not confined to those arising on board ship, as is illustrated by petitioner's count based on an alleged assault in a French port. Moreover, the giving of a simple written notice of claim, required by the Clarification Act, is far less onerous and time-consuming than procuring the appointment of an administrator.

B. *The meaning of the expression "a cause of action arises" is here to be determined by the general purpose and practical ends of the statute.*—Petitioner's entire case is bottomed upon the proposition that the phrase "cause of action arises," imports a technical and inflexible con-

cept, which can be applied mechanically. Thus he urges that the "basic fundamental element" of a "cause of action" is the right to an immediate judicial recovery (Br., pp. 5–8). And he insists that the "language of the Suits in Admiralty Act and the Clarification Act is clear, plain and unambiguous. There is no need, therefore, to resort to construction or conjecture" (Br., p. 8). But this Court has pointed out repeatedly the dangers inherent in the method of solving legal problems by a mechanical application of the concept of "cause of action" without giving proper effect to its shifting meanings. Thus, it said in *United States* v. *Dickinson*, 331 U. S. 745, 748:

> One of the most theory-ridden of legal concepts is a "cause of action." This Court has recognized its "shifting meanings" and the danger of determining rights based upon definitions of a "cause of action" unrelated to the function which the concept serves in a particular situation. *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 67 *et seq.*[8]

[8] In the *Memphis Cotton Oil* case, this Court admonished: "The analogy [to the concept "cause of action"] is helpful, yet it will confuse, instead of helping, if we do not insist at the beginning upon a definition of our terms or at least a recognition of their shifting meanings. A 'cause of action' may mean one thing for one purpose and something different for another. It may mean one thing when the question is whether it is good upon demurrer, and something different when there is a question of the amendment of a pleading or the application of the principle of *res judicata*. * * *

And in the *Koons* case, this Court rejected petitioner's type of approach as a solution of the problem, observing (at pp. 61–62):

> We do not think that it is possible to assign to the word "accrued" any definite technical meaning which by itself would enable us to say whether the statutory period begins to run at one time or the other; but the uncertainty is removed when the word is interpreted in the light of the general purposes of the statute and of its other provisions, with due regard to those practical ends which are to be served by any limitation of the time within which an action must be brought.

The proper inquiry in this case, therefore, is to determine the purpose of the notice provisions and the practical ends to be served by the statute of limitations.

C. *The sole purpose of the notice provisions here is to avoid unnecessary litigation, not to extend the time within which an action may be brought*—The Clarification Act (*infra*, pp. 28–30) permits enforcement by suit against the United States after a written claim has been denied according to the rules and regulations prescribed by the Administrator of the War Shipping Administration. These regulations provide for the filing of an informal claim (46 CFR § 304.24,

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This court has not committed itself to the view that the phrase is susceptible of any single definition that will be independent of the context or of the relation to be governed." See also *Gully* v. *First National Bank*, 299 U. S. 109, 117.

infra, pp. 32–33)[9] without, however, prescribing the time within which this has to be done. This claim is presumed to have been disallowed unless the claimant is notified within sixty days of a determination upon the claim (46 CFR §.304.26, *infra*, p. 33). The committee reports on the bills which became the Clarification Act stated the purpose of the notice requirement to be:

> To prevent unnecessary or premature litigation against the United States, it is required that before suit there shall be an administrative disallowance of the same in accord with rules or regulations to be prescribed by the Administrator, War Shipping Administration.[10]

This passage from the committee reports shows that the purpose of the notice requirement of the Clarification Act is solely to facilitate the settlement of claims without litigation.[11] The statutory

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[9] The filing requirement has been construed very leniently by the Courts. All the merchant seaman has to do is to identify himself and to give a summary statement of the facts upon which he bases his claim. *McInnis* v. *United States*, 152 F. 2d 387 (C. A. 9); cf. *Rodincisc* v. *United States*, 175 F. 2d 479, 481 (C. A. 3), certiorari denied, 338 U. S. 895.

[10] H. Rep. 2572, 77th Cong., 2d Sess., p. 14; H. Rep. 107, 78th Cong., 1st Sess., p. 21; S. Rep. 62, 78th Cong., 1st Sess., p. 14.

[11] A statement of the underlying considerations may be found in the leading case of *Dickinson* v. *Mayor, etc. of New York*, 92 N. Y. 584, 590: "The intent and purpose of section 103 of the charter [requiring the giving of notice of claims and providing for a waiting period] was mainly to enable the comptroller to settle claims against the city and thereby to *save unnecessary costs and expenses in the litigation which*

scheme envisages administrative settlement of the seaman's claim prior to the bringing of any suit. It therefore assumes that governmental liability arises before the denial of the claim and that the claimant has a substantive cause of action prior to notice and denial, which cause of action is the very basis upon which his administrative claim rests. It follows that a statute of limitations commencing to run from the date when the cause of action arises begins to run from the same time that it would if no such notice and denial were required; that is to say, the statute commences to run from the time when the wrong complained of was done and the substantive cause of action accrues; not from the time of the notice and denial. Cf. *Litchfield* v. *M'Donald*, 35 Minn. 167, 168; *People* v. *California Safe Deposit Company*, 41 Cal. App. 727, 731.

A claimant neither sues upon a substantive right created by an administrative adjudication nor appeals to the courts from an adverse admin-

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must ensue. We think it was not intended to indefinitely extend the time in all cases within which an action might be brought against the city and thus put in the power of the claimant to delay, without any limitation whatever, * * *. The statute was for the benefit of the city not for the benefit of the claimant. *It was not designed to repeal the statute of limitations as to the city.* * * *." [Italics supplied.] This line of reasoning has been followed in other jurisdictions. *Dillon* v. *Board of Pension Commissioners*, 18 Cal. 2d 427, 430; *Wilson* v. *Weber County*, 100 Utah 141 (overruled on another ground in *Shea* v. *State Tax Comm.*, 101 Utah 209); *Young* v. *City of Seattle*, 30 Wash. 2d 357, 365.

istrative determination. The considerations underlying cases such as *Woods* v. *Stone,* 333 U. S. 472; *Cope* v. *Anderson,* 331 U. S. 461; *Fisher* v. *Whiton,* 317 U. S. 217; *Rawlings* v. *Ray,* 312 U. S. 96, are therefore inapplicable.[12]

There is no indication whatsoever that Congress inserted the notice provision in order to give the merchant seaman a means to postpone the running of the statute of limitations. In *Thurston* v. *United States,* 179 F. 2d 514, 515 (C. A. 9), the court suggested that "such legislation in favor of seamen must be construed strongly in their favor," that, therefore, the statute of limitations did not begin to run until the seaman's claim was denied, and that Congress intentionally empowered the claimant to postpone the running of liimtations because "it well may be that an apparently slight injury may not develop into a serious disqualification in the seaman's service

[12] For this reason, among others, we believe the position taken here is wholly consistent with our position in *United States* v. *Lance, Inc.*, No. 293, and *United States* v. *Lovknit*, No. 294, now pending on petitions for writs of certiorari. Those cases arise under a different statute, having a different structure and presenting wholly different practical considerations. For instance, Walsh-Healey Act violations, unlike ordinary torts, are not self-revealing and there is normally no basis for suit until after an administrative investigation and determination has been made. Moreover, in those cases the cause of action was in fact based on a precedent administrative decision, and the suit was brought to enforce that decision. (See Pet. in No. 293, pp. 16–23.)

till many months after he is hurt."[13] But there is nothing in the legislative history of the Clarification Act tending to show that it was the purpose of the filing provisions to depart from the firmly established rule that in tort cases the statute of limitations begins to run at the time of the accident, and not only when the full extent of the injuries can be ascertained. *Moore* v. *Atchison, Topeka & S. F. R. Co.*, 187 Okla. 534; Restatement of the Law of Torts, Sec. 899, Comment c.

D. *The purpose of a statute of limitations—to put an end to litigation—would be defeated if claimants could delay the time when it begins to run.*—Statutes of limitations are statutes of repose. Their purpose is to benefit defendants and the courts by bringing an end to litigation and by precluding the trial of an issue at a time when the evidence has become stale. It would defeat "those practical ends which are to be served by any limitation of the time within which an action must be brought" (*Reading Co.* v. *Koons*, 271 U. S. 58, 62) if a plaintiff could prevent the statute from running by delaying to perform a condition

[13] The court below pointed out that the rule of liberal construction for seamen's claims, relied upon in the *Thurston* case, collided head on with the presumption of strict construction where a waiver of sovereign immunity to suit was involved and logically concluded that the one cancelled out the other. It then proceeded realistically to examine the statute as written, without resort to artificial presumptions, and concluded that the entire statutory scheme compelled the holding that limitations ran from the date of the injury.

which he and he alone can fulfill."[14] This Court held, accordingly, in *Reading Co.* v. *Koons,* 271 U. S. 58, 65:

> The very purpose of a period of limitation is that there may be, at some definitely ascertainable period, an end to litigation. If the persons who are designated beneficiaries of the right of action created may choose their own time for applying for the appointment of an administrator and consequently for setting the statute running, the two-year period of limitation so far as it applies to actions for wrongful death might as well have been omitted from the statute. An interpretation of a statute purporting to set a definite limitation upon the time of bringing action, without saving clauses, which would, nevertheless, leave defendants subject indefinitely to actions for the wrong done, would, we think, defeat its obvious purpose.

Similar results were reached in respect of comparable notice provisions in War Risk Insurance litigation. *United States* v. *Sligh,* 24 F. 2d 626, 638 (C. A. 9), vacated after amendment of the statute, 277 U. S. 582; *Wilson* v. *United States,* 70 F. 2d 176, 179 (C. A. 10).

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[14] "Its [the statute of limitations] real practical effect in any specific case is to protect the alleged debtor or party defendant. It seems obvious that he should not be deprived of this protection by anything the plaintiff has done or failed to do." *Green* v. *Loper,* 67 Atl. 2d 856, 858 (Sup. Ct. Del.).

Other courts, through the same or different formulations, have reached the same result. Thus, in *Woollomes* v. *Gomes,* 26 Cal. App. 2d 461, 466, and in *Palmer* v. *Palmer,* 36 Mich. 487, 494, the courts pointed out that a cause of action has accrued when the only obstacle to the immediate filing of a complaint is one entirely within the control of the plaintiff—*i. e.*, that the plaintiff has to give notice to the debtor and wait a limited period of time. In *Dodson* v. *Continental Can Co.,* 159 Wash. 989, 597, it was considered the salient factor that the plaintiff was "capable of setting the law in motion," not that he could immediately file a complaint and recover. *Fuller* v. *State Highway Comm.,* 140 Kan. 558, 561, and *Wilson* v. *Weber County,* 100 Utah 141, 148, hold that the compliance with a notice requirement is not a part of the cause of action but merely a procedural step in the remedy.[15]

A classic formulation of the rule is found in *Swing* v. *Barnard-Cope Mfg. Company,* 115 Minn. 47, 50:

> Strictly speaking, the right to bring suit did not exist until thirty days after this

[15] The argument that the merchant seaman should not be permitted indefinitely to postpone the running of the statute of limitations is not idle speculation. In *Gregory* v. *United States,* 187 F. 2d 101 (C. A. 2), and *MacInnes* v. *United States,* 189 F. 2d 733 (C. A. 1), the claims were filed 5 and 2½ years, respectively, after the injuries allegedly had been suffered.

> notice. But plaintiff admits, and it is clearly the law, that the receiver could not by postponing the notice, extend the time within which he might bring the action, and thus practically annul the statute of limitations. * * * The time within which an action must be commenced begins to run when the cause of action accrues. It does not necessarily follow that the right to sue on the cause of action arises immediately when the cause of action accrues. It may be necessary to obtain leave of court, to make a demand, or to give a notice before suit can be brought on the cause of action; but where such a condition precedent is not a part of the right or cause of action, but merely a part of or one step in the remedy, it does not delay the running of the statute.

See also *Wittman* v. *Board of Police Commissioners of San Francisco,* 19 Cal. App. 229, 231; *Schriber* v. *Richmond,* 73 Wis. 5, 10–11; *Grenada County* v. *Nason,* 174 Miss. 725, 732; *State* v. *Piedmont & N. Ry. Co.,* 186 S. C. 49, 56–59.

Taking into consideration the purpose of the notice provisions of the Clarification Act and the general purpose of any statute of limitations, and applying the test set up in the *Koons* case, *supra,* at p. 16, it appears that for the purposes of Section 5 of the Suits in Admiralty Act petitioner's cause of action "arises" when he suffered the injuries and his substantive cause of action there-

by accrued, and not at the later date when his claim was administratively denied.

II

THE STATUTE OF LIMITATIONS, HAVING BEGUN TO RUN WHEN PETITIONER SUFFERED HIS INJURIES, WAS NOT SUSPENDED PENDING ADMINISTRATIVE DETERMINATION

In *MacInnes* v. *United States,* 189 F. 2d 733, the Court of Appeals for the First Circuit suggested that the result of the *Thurston* case might be sustained on the theory that the statute of limitations was tolled during the pendency of the administrative claim. Petitioner has at no time made any such contention here. Nor would such a contention avail him on this record. Where, as here, the libel shows on its face that it was filed more than two years after the date of the injury, established principles of pleading and practice require that libellant plead facts taking his case out of the bar of limitations. Petitioner wholly failed to make any allegation as to the length of time his claim was pending. The most that appears is a letter, introduced after argument on the motion to dismiss, which is dated April 17, 1946, and refers to prior correspondence going back to April 12, 1946 (R. 1, 5–7). The date of petitioner's injuries is loosely alleged as "in or about November, 1945" and "in or about December, 1945" (R. 3). Taking these allegations most favorably to petitioner, the two year period as to

the most recent injury expired on December 31, 1947, and, even on the tolling theory, his libel, filed January 22, 1948 (R. 2), could become timely only if the claim was pending for at least 22 days. Proof of correspondence extending over a period of five days—from April 12 to 17—plainly failed to establish such pendency.

In any event, we think the tolling theory is untenable. Once limitations have begun to run, disability to sue will not suspend their operation unless the statute expressly provides to the contrary. *Bauserman* v. *Blunt*, 147 U. S. 647, 657, and authorities there cited; *DeArnaud* v. *United States*, 151 U. S. 483, 496; *Nathan* v. *Equitable Trust Co.*, 250 N. Y. 250, 256–257; *Whitehurst* v. *Duffy*, 181 Va. 637, 642; 6 Williston on Contracts (Rev. Ed.) Sec. 2012; *Developments in the Law—Statutes of Limitations*, 63 Harv. L. R. 1177, 1229–1230 (1950). The Clarification Act made no such provision.[16] It follows that a waiting period cannot be taken into account in computing the period of limitations. *Rodinciuc* v. *United States*, 175 F. 2d 479, 481, certiorari denied, 338 U. S. 895; cf. *Manderscheid* v. *United States*,

[16] Some federal statutes (Act of May 29, 1928, 45 Stat. 964, 38 U. S. C. 445, par. 2 [claims for servicemen's life insurance], 28 U. S. C. 2401 (b) [Federal Tort Claims] and state statutes (cf. *Brehm* v. *Mayor etc. of New York*, 104 N. Y. 186, *Dillon* v. *Board of Pension Commissioners*, 18 Cal. 2d 427, and *Young* v. *City of Seattle*, 30 Wash. 2d 357) expressly provide that the statute of limitations shall not run during the waiting period.

88 F. Supp. 232, 234 (N. D. Calif.). There is nothing unusual in this result. As this Court pointed out in *Reading Co.* v. *Koons*, 271 U. S. 58, 65, the purpose of the limitation provision in this type of legislation is not so much to furnish the claimant with a specified number of days [17] within which he may file his libel, as to terminate the statutory liability *at a definitely ascertainable date*. See *Pope* v. *McCrady Rogers Co.*, 163 F. 2d 591, 592 (C. A. 3). Thus, it has been held consistently that an injunction against the filing of suit issued under the Limitation of Liability Acts (R. S. 4281–4289, as amended, 46 U. S. C. 181–189, and Admiralty Rule 51) does not suspend the running of the statute of limitations. *In re Oceanic Steam Navigation Co.*, 204 Fed. 260 (C. A. 2); *The Princess Sophia*, 35 F. (2d) 736, 739 (W. D. Wash.), affirmed, 61 F. 2d 339, 354 (C. A. 9), certiorari denied *sub nom. Brace* v. *Canadian Pacific Ry. Co.*, 288 U. S. 604; *In re Agwi Navigation Co.*, 89 F. 2d 11, 12 (C. A. 2).

[17] The sixty-day waiting period is not so long as to deprive petitioner of a reasonable time within which to file his claim. *Fox* v. *Alcoa S. S. Co.*, 143 F. 2d 667, 668 (C. A. 5), cf. *Nathan* v. *Equitable Trust Co.*, 250 N. Y. 250, 253.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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APPENDIX

1. The Clarification Act of March 24, 1943, 57 Stat. 45, 50 U. S. C. App. 1291, provides in pertinent part as follows:

> * * * (a) officers and members of crews (hereinafter referred to as "seamen") employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration shall, with respect to (1) laws administered by the Public Health Service and the Social Security Act, as amended by subsection (b) (2) and (3) of this section; (2) death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation, or claims arising therefrom not covered by the foregoing clause (1); and (3) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels. Such seamen, because of the temporary wartime character of their employment by the War Shipping Administration, shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act, as amended; the Civil Service Retirement Act, as amended; the Act of Congress approved March 7, 1942 (Public Law 490, Seventy-seventh Congress); or the Act entitled "An Act to provide benefits for the injury, disability, death, or detention of

employees of contractors with the United States and certain other persons or reimbursement therefor", approved December 2, 1942 (Public Law 784, Seventy-seventh Congress). Claims arising under clause (1) hereof shall be enforced in the same manner as such claims would be enforced if the seaman were employed on a privately owned and operated American vessel. Any claim referred to in clause (2) or (3) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. Any claim, right, or cause of action of or in respect of any such seaman accruing on or after October 1, 1941, and prior to the date of enactment of this section may be enforced, and upon the election of the seaman or his surviving dependent or beneficiary, or his legal representative to do so shall be governed, as if this section had been in effect when such claim, right, or cause of action accrued, such election to be made in accordance with rules and regulations prescribed by the Administrator, War Shipping Administration. Rights of any seaman under the Social Security Act, as amended by subsection (b) (2) and (3), and claims therefor shall be governed solely by the provisions of such Act, so amended. When used in this subsection the term "administratively disallowed" means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. When used in this subsection the terms "War Shipping Administration" and "Administrator, War Shipping Administra-

tion" shall be deemed to include the United States Maritime Commisison with respect to the period beginning October 1, 1941, and ending February 11, 1942, and the term "seaman" shall be deemed to include any seaman employed as an employee of the United States through the War Shipping Administration on vessels made available to or sub-chartered to other agencies or departments of the United States.

2. Prior to its amendment by the Act of December 13, 1950, c. 1136, 64 Stat. 1112, 46 U. S. C., Supp. IV, 745, Sec. 5 of the Suits in Admiralty Act, 41 Stat. 525, as amended by the Act of June 30, 1932, 47 Stat. 420, 46 U. S. C. 745, provided in pertinent part as follows:

> suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided*, That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; all other suits hereunder shall be brought within two years after the cause of action arises * * *

Section 5 of the Suits in Admiralty Act now reads in pertinent part:

> That suits as herein authorized may be brought only within two years after the cause of action arises * * *

3. General Order 32 of the War Shipping Administration, issued April 22, 1943 (8 F. R. 5414, 46 CFR §§ 304.20–304.29) provides in pertinent part as follows:

> § 304.20. *Statutory provisions.* Officers and members of crews (hereinafter referred to as "seamen") employed on

United States or foreign flag vessels owned by or under bareboat charter to the War Shipping Administration and operated by an Agent under a General Agency form of Service Agreement, with respect to the claims hereinafter specifically enumerated, are given all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on American flag vessels privately owned and operated. Under such act, court action (a) may not be instituted to enforce such a claim until it shall have been administratively disallowed, in whole or in part, and (b) must be brought pursuant to the Suits in Admiralty Act.

304.21. *Claims which must be submitted for allowance prior to suit.* Claims, unless covered by the Social Security Act or laws administered by the Public Health Service, must be submitted for allowance prior to instituting court action thereon in cases of death, injury, illness, maintenance and cure, loss of effects, detention, repatriation, or claims arising therefrom; in cases relating to the collection of wages and bonuses and the making of allotments, when made against the United States of America, the War Shipping Administration, the Administrator thereof, or any other person for whom the United States of America or War Shipping Administration is responsible; in cases arising under the War Shipping Administration Crew Life and Injury Policy, the Second Seamen's War Risk Policy, and those arising under other Decisions of the Maritime War Emergency Board, in so far as such claims are made against the War Shipping Administration, provided they are made by or on behalf of

seamen who, at the time such claims arose, were employees of the United States through the War Shipping Administration, or by or on behalf of their surviving dependents or beneficiaries or legal representatives.

§ 304.22 *Time of accrual.* Sections 304.20 to 304.29 apply to any claim specified in § 304.21 which:

(a) Arose on or after March 24, 1943; or

(b) Accrued on or after October 1, 1941, and prior to March 24, 1943, if the seaman or his surviving dependent or beneficiary or legal representative elects, as provided by §§ 304.28 and 304.29, to enforce such claim in the same manner as it would be enforced if it arose after the date of the enactment of Public Law 17—78th Congress (57 Stat. 45).

§ 304.23 *Court action, condition precedent.* No seaman or his surviving dependent or beneficiary or legal representative, having a claim under the provisions of §§ 304.21 and 304.22, shall commence a court action for the enforcement of such claim, unless such claim has been filed by him or on his behalf or by or on behalf of his surviving dependent or beneficiary or legal representative as provided in §§ 304.24 and 304.25 and has been administratively disallowed by the person or agency with whom it was so filed.

§ 304.24. *Claim, contents.* The claim need not follow any particular form, but it shall be in writing. It shall contain such particulars as are reasonably necessary as a basis for the allowance or administrative disallowance of such claim and should include, with respect to the seaman in question, his home address, date of birth, place

of birth, certificate of identification number, as well as all the facts and circumstances leading up to and surrounding the happening of the event out of which it is alleged the claim arose.

§ 304.25. *Claims, with whom filed.* Claims based upon any decision of the Maritime War Emergency Board or any insurance policy issued by the War Shipping Administration, excluding claims for loss of or damage to personal effects (if the insured is alive), bonus, and detention and repatriation benefits, shall be filed with the Chief Adjuster, Division of Wartime Insurance, War Shipping Administration, 99 John Street, New York City, or such other agencies or persons as may be designated by the Chief Adjuster for the purpose of determining the allowance or disallowance of such claim. All other claims, including claims for loss of or damage to personal effects (if the insured is alive), bonus, and detention and repatriation benefits, shall be filed with the General Agent of the vessel with respect to which such claims arose, or such Agent's Berth sub-agent to which the former may refer the claim for handling.

§ 304.26. *Claim, when presumed administratively disallowed.* If the person or agency with whom the claim is filed, in accordance with the directions contained herein, fails to notify the claimant in writing of a determination upon such claim, within sixty days following the date of filing thereof, the claim shall be presumed to have been administratively disallowed, and the claimant shall be entitled to enforce his claim by court action.

§ 304.27 *Administrative disallowance, notice of.* In those cases in which the person or agency to whom the claim has been re-

ferred, determines that it shall be administratively disallowed, in whole or in part, such person or agency shall mail to the last known address of the claimant, or deliver or cause to be delivered personally to the latter or his agent, a letter in substantially the following form:

Dear Sir:

Reference: (Name of claimant—Name of vessel)

This is to certify that—(Claimant)—filed a written claim with the undersigned on—(Date received)—; that the claim involved or arose out of (here insert facts sufficient to identify the claim); that such claim has been administratively disallowed, in accordance with the rules and regulations prescribed by the Administrator under the provisions of section 1 (a) of Public Law 17—78th Congress (H. R. 133).